



# Florida Department of Environmental Protection

Northwest District  
160 Governmental Center  
Pensacola, Florida 32502-5794

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

July 14, 2009

Sent to Dewayne Swindall via e-mail:  
aswindall@gwrr.com

Mr. Gerry T. Gates, President  
Bay Line Railroad, L.L.C., L.C.  
4337 Pablo Oaks Court, Suite 102  
Jacksonville, Florida 32224

SUBJECT: Short Form Consent Order  
Proposed Settlement of The Bay Line Railroad, L.L.C., L.C.  
OGC File No.: 09-3145-03-HW

Dear Mr. Gates:

The purpose of this letter is to complete the resolution of the matters previously identified by the Department during a hazardous waste inspection on April 23, 2009, at the Bay Line Railroad, L.L.C., L.C., facility located in Panama City, Florida. Thank you for having your representative met with us on May 27, 2009 to discuss an amicable resolution of the matters which are specifically outlined in the attached Warning Letter and Inspection Report. If you agree to the terms outlined in this letter, please have the appropriate individual sign the last page where it states, "For the Respondent."

The corrective actions required to bring your facility into compliance have been performed. The Department finds that you were in violation of the Rules 62-730.170(3), 62-730.170(2)(e), and 62-730.150(2)(b) Florida Administrative Code (Fla. Admin. Code), cited in the "Summary of Potential Violations" section of the attached Inspection Report. The civil penalties are apportioned as follows: \$644 for violation of Rule 62-730.170(3), Fla. Admin. Code; \$1,933 for violation of Rule 62-730.170(2)(e), Fla. Admin. Code; and \$1,933 for violation of Rule 62-730.150(2)(b) Fla. Admin. Code. In order to resolve the matters identified in the attached Warning Letter, you are assessed civil penalties in the amount of \$4,510, along with \$250 to reimburse the Department costs, for a total of \$4,760.

In lieu of making the monetary payment of the civil penalties, the Department has determined that \$2,000 of the civil penalty may be offset through the implementation of a Pollution Prevention Project. Your purchase of replacement incandescent crossing signal lights with LED lights at a cost of greater than \$2,000 has been accepted for this purpose. Payment of the remaining civil penalties, \$2,510 and the \$250 for Department costs, for a total of \$2,760 shall be made within 30 days of signing this letter.

The Department acknowledges that the payment of these civil penalties by you does not constitute an admission of liability. This payment must be made payable to the Department of Environmental Protection by cashier's check or money order and shall include the OGC File Number assigned above and the notation "Ecosystems Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, District Director, Northwest District, 160 Governmental Center, Pensacola, Florida 32502-5794, within 30 days of your signing this letter.

By signing this letter you are accepting the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department which shall be enforceable pursuant to Section 120.69 and 403.121, Florida Statutes.

If you do not sign and return this letter to the Department at the District address by August 14, 2009, the Department will assume that you are not interested in settling this matter on the above described terms, and will proceed accordingly. None of your rights or substantial interests are determined by this letter unless you sign it and it is filed with the Department Clerk.

Sincerely,



Michael S. Kennedy, P.G.  
Waste Program Administrator

Enclosures(2): Warning Letter dtd 05/15/09  
Inspection Report dtd 04/23/09

c: FDEP Office of General Counsel

**FOR THE RESPONDENTS:**

I, \_\_\_\_\_ on behalf of \_\_\_\_\_, **HEREBY  
ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

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

-----

**FOR DEPARTMENT USE ONLY**

DONE AND ENTERED this \_\_\_\_ day of \_\_\_\_\_, 2009.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
Michael S. Kennedy, P.G.  
Waste Program Administrator

**FILED**, on this date, pursuant to §120.52, Florida Statutes, with the designated  
Department Clerk, receipt of which is hereby acknowledged.

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

Enclosures(2): Warning Letter dtd 05/15/09  
Inspection Report dtd 04/23/09

c: FDEP Office of General Counsel

## NOTICE OF RIGHTS

Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and 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 named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; and (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.



# Florida Department of Environmental Protection

Northwest District  
160 Governmental Center, Suite 308  
Pensacola, Florida 32502-5794

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

May 15, 2009

Sent via e-mail:  
aswindall@gwrr.com

## WARNING LETTER

Mr. Dewayne Swindall  
General Manager  
Bay Line Railroad, LLC.  
PO Box 35098  
Panama City, Florida 32412-5098

Dear Mr. Swindall:

The purpose of this letter is to inform you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. A field inspection by Department of Environmental Protection personnel on April 23, 2009 of Bay Line Railroad, LLC. in Panama City, Bay County, Florida, indicates that violations of the Resource Conservation and Recovery Act (RCRA) and Chapters 376 and 403, Florida Statutes and Rules may exist at the above-described facility. These possible violations are described in the "Summary of Potential Violations and Areas of Concern" section of the enclosed Inspection Report. (All Title 40 Code of Federal Regulations provisions have been adopted by reference in Florida Administrative Code, Chapter 62-730).

The activities observed during the Department's field inspection and any other activities at your facility that may be contributing to violations of the above-described statutes or rules may involve potential liability for civil penalties and should be ceased. Operation of a facility in violation of state statutes or rule may result in liability for damages and restoration as set forth in Section 403.727, Florida Statutes.

You are requested to attend a meeting with Department personnel to discuss this matter at the Northwest District Branch Office at 2353 Jenks Avenue on May 27, 2009, at 10:30 A.M. (CDT). The Department is interested in reviewing any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.

Bay Line Railroad. LLC.  
Page Two

Please be informed that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Florida Statutes. We look forward to your cooperation in completing the investigation and resolution of this matter. If you have any questions, please contact Thomas Dillard at telephone (850) 872-4375, extension 110.

Sincerely,

A handwritten signature in black ink that reads "Michael S. Kennedy". The signature is written in a cursive style with a large, prominent initial "M".

Michael S. Kennedy, P.G.  
Waste Program Administrator

MSK:jbl

Enclosure: Hazardous Waste Inspection Report  
c: Thomas.Dillard@dep.state.fl.us



Florida Department of  
Environmental Protection  
Hazardous Waste Inspection Report

**FACILITY INFORMATION:**

**Facility Name:** Bay Line Railroad L L C  
**On-Site Inspection Start Date:** 04/23/2009 **On-Site Inspection End Date:** 04/23/2009  
**ME ID#:** 56074 **EPA ID#:** FLD984229906  
**Facility Street Address:** 1 Edwards Dr, Panama City, Florida 32405-6097  
**Contact Mailing Address:** PO Box 35098, Panama City, Florida 32412-5098  
**County Name:** Bay **Contact Phone:** (850) 769-6661

**NOTIFIED AS:**

Transporter

**INSPECTION TYPE:**

Routine Inspection for Hazardous Waste Transporter facility

**INSPECTION PARTICIPANTS:**

**Principal Inspector:** Thomas Dillard, Inspector  
**Other Participants:** Mike Taylor, Operations Manager; Roger Leonard, Dispatcher; Dewayne Swindall , General Manager

**LATITUDE / LONGITUDE:** Lat 30° 10' 58.1222" / Long 85° 38' 36.9654"

**SIC CODE:** 4011 - Trans. & utilities - railroads, line-haul operating

**TYPE OF OWNERSHIP:** Private

**Introduction:**

Bay Line Railroad (BLRR) has been in operation since 1905 in Panama City. The former name was Atlanta & Saint Andrews Bay Railway. In 2007, ownership of BLRR changed to a new parent company, Genesee and Wyoming, with District offices in Jacksonville, FL. On June 2, 2008 the facility's General Manager Jerry Hood retired. During the current inspection, Dewayne Swindall was identified as the new General Manager.

**Process Description:**

BLRR transports rail cars to and from local customers. No passenger service is provided. Hazardous waste rail cars are generated solely from Arizona Chemical Panama City Plant. The tank cars are placarded as "RQ Waste Flammable Liquids" and manifests reflect hazardous waste codes D001 and F003. Rail cars from Arizona Chemical are transported to either Systech Environmental Corp. in Paulding, Ohio (OHD005048947) or Rhodia T/C in Baton Rouge, Louisiana (LAD008161234). This operation currently employs 48 personnel, which includes the Panama City maintenance shop, the Dothan facility and yard personnel. The maintenance shop was not inspected during this inspection.

**OBSERVATIONS**

During the inspection, the following were observed:

Since the previous inspection on 6-28-08, the facility has received and transported nine shipments of hazardous waste. No deficiencies were found in a review of these manifests. Personnel reported that presently there were no rail containers of hazardous waste on site.

Annual safety training certificates for personnel were reviewed with no deficiencies found.

Facility security plan was revised in January 2008. Haz Mat Response Program was available for review. Certificates of training for personnel were in this folder. Nate Sledge, who was noted on

Inspection Date: 04/23/2009

facility haz waste car inspection forms attached to all but one manifest, was noted as having a certificate of training dated 9-11-07. Personnel said this was a once every three year training requirement.

State of Florida Hazardous Waste Transporter Certificate of Approval posted on site was dated August 13, 2007 and reflected an insurance policy with an expiration date of August 1, 2008 issued by Lexington Insurance.

**New Potential Violations and Areas of Concern:****Checklist Independent Potential Violations and Areas of Concern**

---

Type:	Violation
Rule:	62-730.170(2)(a)
Explanation:	Facility failed to provide Department proof of financial responsibility as required in Rule 62-730.170(2)(a). Last report to Department dated August 13, 2007 reflected expiration date of August 1, 2008.
Corrective Action:	Have and maintain financial responsibility requirements as defined in Rule 62-730.170(2)(a).

---

Type:	Violation
Rule:	62-730.170(3)
Explanation:	During the visit the facility provided for review a certificate of insurance which expired August 1, 2008. Facility not able to show proof of insurance in effect since that date to the day of inspection April 23, 2009. A check with FDEP Tallahassee shows that subsequent to a Department inspection on June 26, 2008, a renewal packet was mailed to the Panama City address in July 2008, attention Mr. Jerry Hood, with no subsequent reply from the facility.
Corrective Action:	Complete annual financial responsibility requirements as required.

---

Type:	Violation
Rule:	62-730.170(2)(e)
Explanation:	The facility failed to annually submit to the Department two originally signed Transporter Status Forms, Form 62-730.900(5)(d), requirements. Last submittal by facility to Department dated August 2007.
Corrective Action:	Complete annual requirements as defined in Rule 62-730.170(2)(e).

---

Type:	Violation
Rule:	62-730.150(2)(b)
Explanation:	The facility came under a new parent company in 2007 and Notification information was not updated by Form 8700-12FL as of current visit in April 2009.
Corrective Action:	Complete and submit updated subsequent notification Form 8700-12FL as required.



Inspection Date: 04/23/2009

---

**Summary of Potential Violations and Areas of Concern:**Potential Violations

<b>Rule Number</b>	<b>Area</b>	<b>Date Cited</b>	<b>Explanation</b>
Checklist Independent Violations			
62-730.170(2)(a)		04/23/2009	Facility failed to provide Department proof of financial responsibility as required in Rule 62-730.170(2)(a). Last report to Department dated August 13, 2007 reflected expiration date of August 1, 2008.
62-730.170(3)		04/23/2009	During the visit the facility provided for review a certificate of insurance which expired August 1, 2008. Facility not able to show proof of insurance in effect since that date to the day of inspection April 23, 2009. A check with FDEP Tallahassee shows that subsequent to a Department inspection on June 26, 2008, a renewal packet was mailed to the Panama City address in July 2008, attention Mr. Jerry Hood, with no subsequent reply from the facility.
62-730.170(2)(e)		04/23/2009	The facility failed to annually submit to the Department two originally signed Transporter Status Forms, Form 62-730.900(5)(d), requirements. Last submittal by facility to Department dated August 2007.
62-730.150(2)(b)		04/23/2009	The facility came under a new parent company in 2007 and Notification information was not updated by Form 8700-12FL as of current visit in April 2009.

Areas of Concern

No Areas of Concern

**ATTACHMENTS:**

Inspection Date: 04/23/2009

Entrance to facility yard area



Yard Office



**Conclusion:**

The facility appears to be out-of-compliance at the time of this inspection.


The facility needs to perform the corrective actions identified in each potential violation cited above.

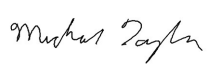
Inspection Date: 04/23/2009


**Signed:**


A hazardous waste compliance inspection was conducted on this date, to determine your facility's compliance with applicable portions of Chapters 403 & 376, F.S., and Chapters 62-710, 62-730, 62-737, & 62-740 Florida Administrative Code (F.A.C.). Portions of the United States Environmental Protection Agency's Title 40 Code of Federal Regulations (C.F.R.) 260 - 279 have been adopted by reference in the state rules under Chapters 62-730 and 62-710, F.A.C. The above noted potential items of non-compliance were identified by the inspector(s).

This is not a formal enforcement action and may not be a complete listing of all items of non-compliance discovered during the inspection.

Thomas Dillard <hr/> <b>PRINCIPAL INSPECTOR NAME</b>   <hr/> <b>PRINCIPAL INSPECTOR SIGNATURE</b>	Inspector <hr/> <b>PRINCIPAL INSPECTOR TITLE</b>  FDEP <hr/> <b>ORGANIZATION</b>	<hr/> 4/23/2009 <hr/> <b>DATE</b>
--	--	--------------------------------------

Mike Taylor <hr/> <b>REPRESENTATIVE NAME</b>   <hr/> <b>REPRESENTATIVE SIGNATURE</b>	Operations Manager <hr/> <b>REPRESENTATIVE TITLE</b>  Bay Line Railroad <hr/> <b>ORGANIZATION</b>	<hr/> 4/23/2009 <hr/> <b>DATE</b>
---	---	--------------------------------------

Roger Leonard <hr/> <b>REPRESENTATIVE NAME</b>   <hr/> <b>REPRESENTATIVE SIGNATURE</b>	Dispatcher <hr/> <b>REPRESENTATIVE TITLE</b>  Bay Line Railroad <hr/> <b>ORGANIZATION</b>	<hr/> 4/23/2009 <hr/> <b>DATE</b>
---	---	--------------------------------------

Dewayne Swindall <hr/> <b>REPRESENTATIVE NAME</b>   <hr/> <b>REPRESENTATIVE SIGNATURE</b>	General Manager <hr/> <b>REPRESENTATIVE TITLE</b>  Bay Line Railroad <hr/> <b>ORGANIZATION</b>	<hr/> 4/23/2009 <hr/> <b>DATE</b>
--	--	--------------------------------------

NOTE: By signing this document, the Site Representative only acknowledges receipt of this Inspection Report and is not admitting to the accuracy of any of the items identified by the Department as "Potential Violations" or areas of concern.