

419
Metal & Auto
Recycling Center
600 Old Sanford Oviedo Rd
Winter Springs, Fl. 32708
Tel. 407-414-4192

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DEP Central Dist

Michael Eckoff
Florida Department of
Environmental Protection
Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Dear Mr. Eckoff,

This is to notify you that 419 Metals & Auto Recycling is not in agreement with the proposed settlement offer contained in the October 2, 2009 letter. In the documents attached to the letter, there is a tabulation of three alleged violations and a proposed assessment for each. Following is our response to those violations.

- a. "419 did not have a program to check for mercury switches" – It is true that 419 had not started our mercury switch program at the time of the FLDEP visit. However, we began immediately after the visit and have been in compliance since. We asked our environmental consultant, W. Z. Baumgartner & Associates, Inc. (WZB) what other scrap yards were doing. We were told that a number of yards are still setting up their programs and having their employees trained. WZB is currently working with over 200 scrap yards around the country and has a program where they train the inspectors how to find and remove unacceptable materials, including mercury switches, from incoming scrap. They are unaware of any other scrap yard being fined for not have their program fully operational. We believe the assessment of \$14,184 is excessive.
- b. "419 failed to clean up numerous oil releases at the vehicle processing area" – We assert that is statement is factually incorrect. As we have explained to FLDEP representatives on several occasions, we clean every drip or spill in the vehicle processing area at the end of the shift every day. We believe what is actually intended is that the violation is for not "immediately" cleaning up small quantities of petroleum products released

to the concrete during the process of removing fluids from the scrap automobiles. All vehicle processing is performed on concrete (24-inches thick) and under roof. Any drips of petroleum products or other fluids removed from the vehicles are contained in the processing area. 419 operates under the Florida general stormwater permit. Nowhere in the permit does it require "immediate" cleanup of a drip or a minor spill. The only time an immediate response is required is when a spill occurs that is large enough to be an environmental threat. The Federal Oil Pollution Act, under which the SPCC is written, does not require immediate clean up of incidental releases.

The reference in the violation is 40 CFR 279.22(d). This is part of the Federal used oil regulations and that section is as follows:

"(d) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a generator must perform the following cleanup steps:

- (1) Stop the release;
- (2) Contain the released used oil;
- (3) Clean up and manage properly the released used oil and other materials; and
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service."

As stated previously, any small release during the process of removing the fluids in the vehicle processing area is contained on the concrete under roof. If there is no threat of runoff from the release, there is no requirement for immediate release and this section of the Federal code does not require immediate response. If FLDEP's interpretation of this activity was applied universally, scrap yards would stop processing automobiles and almost every vehicle maintenance facility would have to close. We contend that the activities conducted by 419 and observed by FLDEP personnel do not constitute a violation.

- c. "419 failed to keep closed and provide secondary containment for totes storing used oil and keep closed and label "Used Oil" a 5-gallon storing used oil." – We maintain that there is a fundamental difference between a container used to collect liquids in an ongoing process and a container used to store liquids. Neither the totes nor the 5-gallon pail qualify as storage units under the regulations. All of the storage tanks at 419 are properly labeled and are kept in an area with secondary containment. The

5-gallon pail and the totes are used in the process because they can be placed in close proximity to the vehicles which are being processed. The closer the collection tanks are to the vehicles, the lower the probability of a release. The contents of these collection tanks are transferred to the used oil storage tanks in the secondary containment as necessary but always by the end of the shift. We also note that since the totes and the pail are "protected from the weather" the FAC seems to indicate that they do not need to be closed. We contend that the activities conducted by 419 and observed by FLDEP personnel do not constitute a violation.

"6) No person may store used oil in tanks or containers unless they are clearly labeled with the words "used oil" and are in good condition (no severe rusting, apparent structural defects or deterioration) with no visible oil leakage. If tanks or containers are not stored inside a structure, the contents shall be closed, covered or otherwise protected from the weather. If tanks or containers are not double-walled, they shall be stored on an oil-impermeable surface such as sealed concrete or asphalt, and must have secondary containment which has the capacity to hold 110% of the volume of the largest tank or container within the containment area."

Sincerely,

A handwritten signature in black ink, appearing to read 'Bart Phillips', with a long horizontal line extending to the right.

Bart Phillips
419 Metal & Auto Recycling Center Inc.
bart419@msn.com
407-414-4192