

Memorandum

SOUTHWEST DISTRICT ENFORCEMENT COVER MEMO

TO: [Signature] Deborah Getzoff, District Director
THROUGH: [Signature] William Kutash, Waste Program Administrator
[Signature] James Dregne, Hazardous Waste Program Manager
[Signature] Elizabeth Knauss, HW Enforcement Coordinator
FROM: [Signature] Shannon Camp, ES II
DATE: June 24, 2010

FILE NAME: Cliff Berry, Inc. COUNTY: Hillsborough
PROGRAM: Hazardous Waste Inspection June 31, 2009

TYPE OF DOCUMENT: Draft Short Form Consent Order
REQUESTED ACTION: Signature

DESCRIPTION OF VIOLATIONS: Permitted Used Oil Processor exceeding storage capacity by over 50%. Storing used oil in unpermitted units, not labeled and without secondary containment at two locations. Falsifying inspection records.

STATUS OF CORRECTIVE ACTIONS: Corrected

STATUS OF PENALTY ASSESSMENT: Penalty was prepared in accordance with United States EPA RCRA Civil Penalty Policy. The Department has proposed a 10% penalty reduction in order to settle this case.

PENALTY: [ ] Not Applicable Amount: \$68,220.00
Costs & Expenses: \$ 1,000.00
Total: \$ 69,220.00
Secretary Approval [ ] Pending

Attachments: Penalty Authorization Memo and Worksheets



# Florida Department of Environmental Protection

Southwest District Office  
13051 North Telecom Parkway  
Temple Terrace, Florida 33637-0926

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

June 28, 2010

CERTIFIED MAIL 7009 1680 0001 0455 3317  
RETURN RECEIPT REQUESTED

William E. Parkes, Jr.  
Manager Regulatory Affairs  
Cliff Berry, Inc.  
Post Office Box 13079  
Fort Lauderdale, FL 33316-0100

SUBJECT: Proposed Settlement of Cliff Berry, Inc.  
EPA ID Number: FLR 000 013 888  
OGC File No.: 10-0960

Dear Mr. Parkes:

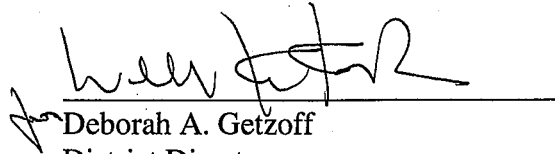
The purpose of this letter is to complete the resolution of the matter previously identified by the Department in the Warning Letter dated October 1, 2009, a copy of which is attached. The corrective actions required to bring your facility into compliance have been performed. The Department finds that you are in violation of the rules and statutes cited in the attached Warning Letter. In order to resolve the matters identified in the attached Warning Letter, you are assessed civil penalties in the amount of \$68,220.00, along with \$1,000.00 to reimburse Department costs, for a total of \$69,220.00. The civil penalty in this case includes six violations of \$2,000.00 or more.

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, 13051 North Telecom Parkway, Temple Terrace, FL, 33637-0926, within 30 days of your signing this letter. Alternatively, Cliff Berry, Inc. may elect to pay the penalty in four equal quarterly installment payments of \$17,305.00 each commencing within 21 days of your signing this letter. Final payment is due no later than April 30, 2011. Failure to timely make any installment payment will allow the Department, at its discretion, to accelerate the balance which will become immediately due.

Your signing this letter constitutes your acceptance of the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it (including its attachments) 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 Sections 120.69 and 403.121, Florida Statutes.

If you do not sign and return this letter to the Department at the District address within 14 days of receipt, 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 yours,



Deborah A. Getzoff  
District Director  
Southwest District

**FOR THE RESPONDENT:**

I, Larry A. Doyle on behalf of Cliff Berry, Inc., **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: \_\_\_\_\_  
Larry A. Doyle, Executive Vice President

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

.....  
**FOR DEPARTMENT USE ONLY**

DONE AND ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
Deborah A. Getzoff  
District Director

**FILING AND ACKNOWLEDGMENT**

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

\_\_\_\_\_  
Clerk Date  
Copies furnished to: Lea Crandall, OGC

## 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 Department's Consent Order identification number and the county in which the subject matter or activity is located; (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 Consent Order; (d) A statement of when and how the petitioner received notice of the Consent Order; (e) A statement of all material facts disputed by petitioner, if any; (f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order; (g) A statement of which rules or statutes the petitioner contends require reversal or modification of the Consent 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 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

Southwest District Office  
13051 North Telecom Parkway  
Temple Terrace, Florida 33637-0926

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

October 1, 2009

**CERTIFIED MAIL 7008 3230 0002 7195 8230**  
**RETURN RECEIPT REQUESTED**

Dan Stone  
Cliff Berry, Inc.  
5218 St. Paul Street  
Tampa, FL 33619

Re: Cliff Berry, Inc.  
FLR 000 013 888  
Warning Letter # WL09-0045HW29SWD  
Hillsborough County

Dear Mr. Stone:

The purpose of this letter is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. A hazardous waste program field inspection conducted on July 31, 2009 indicates that violations of Florida Statutes and Rules may exist at the above referenced facility. Department of Environmental Protection personnel made observations described in the attached inspection report.

Sections 403.161 and 403.727, Florida Statutes (F.S.) provides that it is a violation to fail to comply with rules adopted by the Department. The activities observed during the Department's field inspection and any other activities at your facility that may be contributing to violations of Florida Statutes or Department Rules should cease.

You are requested to contact Shannon Camp at (813)632-7600, extension 473 within fifteen (15) days of receipt of this Warning Letter to arrange a meeting to discuss this matter. 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.

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), F.S. If after further investigation the Department's preliminary findings are verified, this matter may be resolved through the entry of a Consent Order which will include a compliance schedule, an appropriate penalty, and reimbursement of the Department's costs and expenses. In accordance with

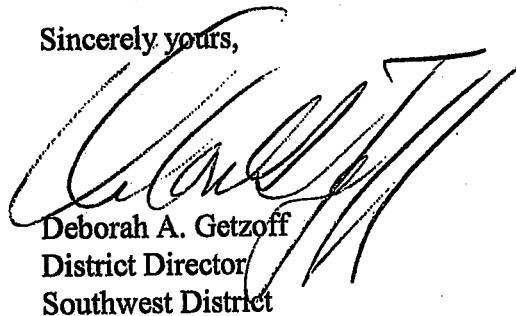
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339300  
OCT 8 2009

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[www.dep.state.fl.us](http://www.dep.state.fl.us)

Florida Statute 403.161, penalties which can be assessed in this case are up to \$10,000 per day, per violation.

If this investigation confirms that your facility is significantly out of compliance, and the case is not resolved through timely entry of a Consent Order, under the Department's agreement with the EPA, a formal referral for judicial action must be made to the Department's Office of General Counsel. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely yours,



Deborah A. Getzoff  
District Director  
Southwest District

DAG/sdc

Attachment

cc: Mike Redig, HWR Section (electronic)  
Alan Annicella, USEPA Region IV (electronic)  
Kelley Boatwright, Hills. EPC  
Compliance File



Florida Department of  
Environmental Protection  
Hazardous Waste Inspection Report

**FACILITY INFORMATION:**

Facility Name: Cliff Berry, Inc.  
On-Site Inspection Start Date: 07/31/2009 On-Site Inspection End Date: 07/31/2009  
ME ID#: 13562 EPA ID#: FLR000013888  
Facility Street Address: 5218 Saint Paul St, Tampa, Florida 33619-6118  
Contact Mailing Address: PO Box 13079, Fort Lauderdale, Florida 33316-0100  
County Name: Hillsborough Contact Phone: (954) 763-3390

**NOTIFIED AS:**

CESQG (<100 kg/month)  
Transporter  
Used Oil

**INSPECTION TYPE:**

Routine Inspection for Used Oil Processor facility

**INSPECTION PARTICIPANTS:**

Principal Inspector: Shannon D Camp, ES II  
Other Participants: Beth Knauss, Environmental Manager; Dan Stone, Manager

**LATITUDE / LONGITUDE:** Lat 27° 55' 12.3033" / Long 82° 23' 43.3281"

**SIC CODE:** 4953 - Trans. & utilities - refuse systems

**TYPE OF OWNERSHIP:** Private

**Introduction:**

Cliff Berry, Inc. (CBI) was inspected on July 31, 2009 to determine the facility's compliance with state and federal hazardous waste and used oil regulations. Cliff Berry is a permitted used oil processor as well as a used oil transporter and transfer facility. Mr. Dan Stone accompanied the inspectors throughout the inspection. The Department last inspected this facility in August 2008.

**Process Description:**

CBI was issued a new permit modification on July 15, 2009. The permit was modified to allow the facility to bulk and process non-hazardous petroleum contaminated debris and soil in a mixing chamber. CBI has not yet begun this process at their facility.

**Potential Violations and Areas of Concern:**

Type: Violation  
Rule: 279.54(f)

339297  
MIT  
3 2009

Inspection Date: 07/31/2009

**Explanation:** At the time of the inspection, the eight frac tanks being utilized by CBI to store used oil were not labeled as containing "Used Oil".

**Corrective Action:** CBI must only store used oil in the permitted tanks which must be labeled with the words "Used Oil".

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**Type:** Violation

**Rule:** 279.54(c)

**Explanation:** At the time of the inspection, CBI was storing used oil in eight, 20,000 gallon capacity frac tanks on the property without secondary containment. The frac tanks had been used on site for at least eight months.

**Corrective Action:** Effective immediately, CBI must stop utilizing the frac tanks to store used oil. In addition, used oil may not be held more than 24 hours without secondary containment.

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**Type:** Violation

**Rule:** 279.56(b)(3)

**Explanation:** Multiple delivery papers for used oil, destined for processing in Miami, were observed without the transporter's EPA identification number noted. Instead, the paperwork has "CESQG" in place of both CBI' (Dania) and Everglades Waste Removal Services EPA ID number.

**Corrective Action:** CBI must ensure that the transporter's EPA ID number is on all shipments of used oil.

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**Type:** Violation

**Rule:** 403.161(1)(b) F.S.

**Explanation:** At the time of the inspection, CBI was not operating in compliance with the permit for at least seven months and failed to notify the Department as specified in G.C.1.8.

**Corrective Action:** As specified in the permit, CBI must immediately notify the Department with the description of and cause of the non-compliance.

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**Type:** Violation

**Rule:** 403.161(1)(c) F.S.

**Explanation:** The rail car inspection logs observed during the inspection indicate that the facility was inspecting the spill containment and that it was "OK". However, during the inspection and subsequent follow up visits, the rail cars were observed without any secondary containment or the portable spill pans which are noted in the facility's Rail Car SPCC Plan and Rail Car Spill Response Summary.

**Corrective Action:** CBI must not indicate incorrect information on inspection logs

**Type:** Violation



Inspection Date: 07/31/2009

Rule: 62-710.800(3) FAC

Explanation: At the time of the inspection, CBI was storing used oil in eight 20,000 gallon capacity frac tanks without secondary containment (120,000 gallons of used oil in total) in violation of the permit, G.C.1.27.

Corrective Action: Per the permit, CBI can only store used oil in the permitted tanks 1 through 10.

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Type: Violation

Rule: 62-710.800(2) FAC

Explanation: At the time of the inspection, CBI was storing over 290,000 gallons of used oil in violation of the permit (GC1.28).

Corrective Action: CBI is only permitted to store up to 290,000 gallons of used oil and is only permitted to store used oil within the permitted tanks 1 through 10.

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Type: Violation

Rule: 62-710.500(1)(a)

Explanation: CBI routinely transports used oil on rail cars to the Miami facility. CBI stores the rail cars on a siding owned by CSX adjacent to Mariani Asphalt. The siding is not contiguous with the CBI facility. CBI has been storing used oil in two rail cars since January 2009. In 2008, CBI held used oil at this location for more than 24 hours on at least one occasion. CBI failed to register this property as a used oil transfer facility or a used oil processor as the used oil has been stored for over 35 days.

Corrective Action: CBI must immediately notify the Department of their used oil activities on any noncontiguous property storing rail cars holding used oil.

---

Type: Violation

Rule: 62-710.401(6) FAC

Explanation: At the time of the inspection, CBI was storing used oil in two railcars for at least eight months without providing secondary containment.

Corrective Action: Used oil stored in railcars for more than 24 hours must be provided with secondary containment.

---

Type: Area Of Concern

Rule: 279.55(b)

Explanation: The incorporated tank sampling procedure "bottle with a cork that can be pulled at the specified depth" listed in the Waste Analysis Plan does not comply with Department SOPs or ASTM fuel sampling standards. The WAP also does not address specifics on chain of custody or field documentation in accordance with Department SOPs.

Corrective Action: CBI should amend the WAP to address the documentation requirements. Batches

Inspection Date: 07/31/2009

should be identified by date and tank number. CBI should have a sample log, noting the date, time, tank number, and type of sample (spot, depth, composite, etc). CBI must ensure sampling and analysis procedures comply with FAC 62-297.440(1), 62-210.300 and 62-4.070(3) for burner fuel marketed to sources with air permits issued by the FDEP.

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Type: Area Of Concern

Rule: 279.52(b)(2)(v)

Explanation: CBI's Contingency Plan does not include a list of emergency equipment that is site specific. Instead, the plan only lists equipment that is available company wide for emergency situations.

Corrective Action: CBI should update their contingency plan to reflect the emergency equipment available to them at the Tampa location. In addition, this equipment must be inspected, and the inspections must be documented, to ensure that the equipment is available and in working order.

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Type: Area Of Concern

Rule: 62-710.800(2) FAC

Explanation: At the time of the inspection, the filter box for the used oil tank system was not located within secondary containment as specified in G.C.1.32.

Corrective Action: CBI must ensure that all ancillary equipment for the used oil tank system is also located within secondary containment.

### Conclusion:

At the time of the inspection, Cliff Berry, Inc. was not operating in compliance with state and federal regulations governing used oil transporters and processors.

### 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.

Shannon Camp  
Environmental Specialist II  
Hazardous Waste Section

## PENALTY COMPUTATION WORKSHEET

Violator's Name: Cliff Berry, Inc.

Identify Violator's Facility: 5218 St Paul St., Tampa, FL 33619 FLR000013888

Name of Department Staff Responsible for the Penalty Computations: E. Knauss

Warning Letter #: WL09-0045HW29SWD Date: October 21, 2009

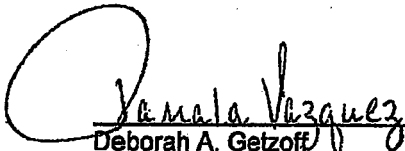
	Violation Type	Manual Guide	Potential for Harm	Extent of Deviation	Matrix Range	Multi Day	Other Adjustments	Total
1.	Storing used oil in containers that were not labeled "used oil" 40 CFR 279.45(g) 40 CFR 279.54(f)	UO 146	Major	Major	\$10,000 -8,000		X 2 two locations	\$16,000
2.	Storing 8 portable tanks and two rail cars containing used oil without secondary containment 40 CFR 279.45(d) 40 CFR 279.54(c) 62-710.401(6) FAC 62-710.800(3) FAC	UO 101 UO 103 UO 88	Major	Major	\$10,000 -8,000		X 2 two locations	\$20,000
3.	Failure to comply with General Condition 1.28 of the facility permit by exceeding storage capacity. Failure to notify the Department of noncompliance as required by General Condition 1.8 of the permit. Failure to have a permit for storing oil more than 35 days. 62-710.800(2) FAC 403.161(1)(b) FS	UO 86	Major	Major	\$10,000 -8,000	30 +	\$1,000 per each additional day of violation up to 30 days	\$39,000
4.	Several oil delivery records failed to include the transporter's EPA ID number 40 CFR 279.56(b)	UO 40	Minor	Moderate	\$500			\$500
5.	Cliff Berry's rail car inspection records falsely indicated track pans were provided as containment as required by the facility spill plan. 403,161(1)(c) FS	n/a	Major	Major	\$10,000 -8,000			\$8,000

Cliff Berry Inc – Penalty Computation Worksheet

6.	Failure to register the rail siding location as a UO Transfer Facility 62-710.500(1)(a) FAC	UO 25	\$300 Statutory Fine 403.758(2)				\$300
SUB-TOTAL							83,800
DEPARTMENT COSTS							\$1,000

Total Penalties Including Department Costs:

\$ 84,800.00

  
 Deborah A. Getzoff  
 District Director

10.22.2009  
 Date

Southwest District

**WORKSHEET  
RANKING SYSTEM FOR POTENTIAL FOR HARM**

FACILITY NAME: Cliff Berry, Inc. Date: 9/16/09

EPA ID No.: FLR000013888 Case #: WL09-0045HW29SWD

	Violation	Description	Nature of Waste	Amount of Waste	Release	People	Total Points
1.	40 CFR 279.45(g) 40 CFR 279.54(f) 62-710.401(6) FAC	Storing used oil in containers that were not labeled "used oil"	4	8	4	4	20
2.	40 CFR 279.45(d) 40 CFR 279.54(c) 62-710.401(6) FAC 62-710.800(3) FAC	Storing 8 portable tanks and two rail cars containing used oil without secondary containment	4	8	4	4	20
3.	62-710.800(2) FAC 403.161(1)(b) FS	Exceeding storage capacity. Failure to notify the Department of noncompliance	4	8	4	4	20
4.	40 CFR 279.56(b)	Several oil delivery recordkeeping	4	8	1		13

For violations 5, harm to the regulatory program provides a basis for "major" potential for harm

For violation 4, potential for harm was reduced as the oil did not leave custody of Cliff Berry Inc. when it was transferred to different facilities.

**SCORING SYSTEM**

NATURE OF WASTE	AMOUNT OF WASTE	RECEPTORS	
		Releases	Affected Population
		8 - Actual off site	
4 - Used Oil	8 - > 550 g (10 drums)	6 - Actual	4 - > 1,000
	5 - 3 to 10 drums	4 - High potential for release	3 - 100 - 1,000
2 - Oil Filters	2 - < 165 g (3 drums)		2 - 10 - 100
		1 - No release	1 - <10

MAJOR POTENTIAL FOR HARM: 18-24

MODERATE POTENTIAL FOR HARM: 13-18

MINOR POTENTIAL FOR HARM: 8-12

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ENVIRONMENTAL PROTECTION

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**Cliff Berry Inc.**  
Street, Apt. 1 **P.O. Box 13079**  
or PO Box # **Ft. Lauderdale, FL 33316-0100**  
City, State, ZIP+4®

PS Form 3800, August 2006