



Florida Department of
Environmental Protection
Southwest District Office
13051 North Telecom Parkway
Temple Terrace, Florida 33637-0926

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Mimi Drew
Secretary

November 9, 2010

Jon Sandora
Cliff Berry, Inc.
5218 St. Paul St.
Tampa, FL 33619

Re: Cliff Berry, Inc.
FLR 000 013 888
Hillsborough County

Dear Mr. Sandora:

On October 26, 2010 the Department of Environmental Protection (Department) received the analytical data of your facility's fill port sludge. The purpose of the test was to ensure that the waste was properly characterized. Analysis of the sludge detected benzene at a concentration of 0.64 mg/L. This concentration exceeds the regulatory level, which is 0.5 mg/L. The Department requests that you send copies of the manifest(s) demonstrating proper disposal of the sludge to the office at the address above.

Therefore, the Department finds that Cliff Berry, Inc. failed to conduct a proper waste determination on the fill port sludge as noted in the Department's August 17, 2010 inspection report. This sludge has historically been disposed of a non-hazardous waste to the Okeechobee landfill. No records of any past analyses were submitted to the Department.

In an effort to resolve the Department's open enforcement case with Cliff Berry, Inc., a copy of the Penalty Computation Worksheet and a Short Form Consent Order are included for your review. If you have any questions regarding this letter or have any additional information you wish to submit to the office, please contact Shannon Camp at (813) 632-7600, ext 473.

Sincerely,

William Kutash, P.G.
Administrator
Division of Waste Management

WK/sdc

**WORKSHEET
RANKING SYSTEM FOR POTENTIAL FOR HARM**

FACILITY NAME: Cliff Berry, Inc. Date: 11/1/2010

EPA ID No.: FLR000013888 Case #: _____

	Violation	Description	Nature of Waste	Amount of Waste	Release	People	Total Points
1	262.11	Improper waste determination	4	8	4	3	19

SCORING SYSTEM – Hazardous Waste and Universal Waste (Part 273) Violations

NATURE OF WASTE	AMOUNT OF WASTE	RECEPTORS	
		Releases	Affected Population
8 - High hazard wastes	8 - > 5,000 kg (25 drums)	6 - Release	4 - > 1,000
	5 - 1,000 to 5,000 kg 6 to 25 drums	4 - High potential for release	3 - 100 - 1,000
4 - typical hazardous waste	2 - < 1,000 kg (6 drums)		2 - 10 - 100
		1 - No release	1 - <10

SCORING SYSTEM – Used Oil (Part 279 or 62-710) Violations

NATURE OF WASTE	AMOUNT OF WASTE	RECEPTORS	
		Releases	Affected Population
4 – Used Oil	8 - ≥ 550g (10 drums)	8 – Off site or to water	4 - > 1,000
	5 - 165 to 550 g (3 to 10 drums)	6 - Actual	3 - 100 - 1,000
2 – Used Oil Filters	2 - 25 - 165 g (3 drums)	4 – Potential or de minimus	2 - 10 - 100
	1 - < 25 g	1 - No release	1 - <10

MAJOR POTENTIAL FOR HARM: 19-24
 MODERATE POTENTIAL FOR HARM: 13-18
 MINOR POTENTIAL FOR HARM: 6-12

PENALTY COMPUTATION WORKSHEET

Violator's Name: Cliff Berry, Inc.

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

Name of Department Staff Responsible for the Penalty Computations: S. Camp

Warning Letter #: _____

Date: November 1, 2010

Violation Type		Manual Guide	Potential for Harm	Extent of Deviation	Matrix Range	Total
1.	262.11 – failure to conduct a proper waste determination on fill port sludge	HW 16	Major	Major	\$37,500 - \$28,330	\$28,330
SUB-TOTAL						\$28,330
DEPARTMENT COSTS						\$300

Total Penalties Including Department Costs:

\$28,630.00



 Deborah A. Getzoff
 District Director
 Southwest District

11-9-2010

 Date

Larry A. Doyle
Executive Vice President
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.:**

Dear Mr. Doyle:

The purpose of this letter is to complete the resolution of the matter previously identified by the Department in the Noncompliance Letter dated September 14, 2010, 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 40 CFR 262.11 for failure to conduct a proper waste determination on the fill port sludge. In order to resolve the matters identified in the attached Noncompliance Letter, you are assessed civil penalties in the amount of \$28,330.00, along with \$300.00 to reimburse Department costs, for a total of \$28,630.00. The civil penalty in this case includes one violation 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.

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.

Memorandum

SOUTHWEST DISTRICT ENFORCEMENT COVER MEMO

TO: ^{PLV 11-9-10} Deborah Getzoff, District Director

THROUGH: ~~William Kutash, Waste Program Administrator~~
~~James Dregne, Hazardous Waste Program Manager~~ 11(3)
~~Elizabeth Knauss, Enforcement Coordinator~~

FROM: SPC Shannon Camp, ES II

DATE: November 1, 2010

FILE NAME: Cliff Berry, Inc. COUNTY: Hillsborough
PROGRAM: Hazardous Waste

TYPE OF DOCUMENT: Penalty computation worksheet, draft SFCO, transmission letter
REQUESTED ACTION: Signature/Review

DESCRIPTION OF VIOLATIONS: improper waste determination on fill port sludge.
STATUS OF CORRECTIVE ACTIONS: Corrected

STATUS OF PENALTY ASSESSMENT: Penalty was prepared in accordance with United States EPA RCRA Civil Penalty Policy.

PENALTY: Not Applicable Amount: \$28,330.00
Costs & Expenses: \$ 300.00
Total: \$ 28,630.00
Secretary Approval Pending

Attachments:

From: Brantley, Anna
Sent: Tuesday, November 09, 2010 1:29 PM
To: Camp, Shannon D.
Subject: Cliff Berry_Penalty Computation wkst, draft SFCO.pdf (SECURED) - Adobe Acrobat Professional
Attachments: Cliff Berry_Penalty Computation wkst, draft SFCO

Document mailed to addressee on Tuesday, November 09, 2010

Anna Brantley
Administrative Assistant II
FL DEP / SWD / Waste Management
13051 North Telecom Parkway
Temple Terrace FL 33637-0629
Tel: 813/632-7600, Ext. 377
Fax: 813/632-7664
anna.brantley@dep.state.fl.us

The Department of Environmental Protection values your feedback as a customer. DEP Secretary Michael W. Sole is committed to continuously assessing and improving the level and quality of services provided to you. Please take a few minutes to comment on the quality of service you received. Simply click on [this link to the DEP Customer Survey](#). Thank you in advance for completing the survey.