

Florida Department of Environmental Protection

Southwest District
13051 North Telecom Parkway
Temple Terrace, Florida 33637-0926
Telephone: 813-632-7600

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard, Jr.
Secretary

February 4, 2011

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

Re: Cliff Berry, Inc.
FLR 000 013 888, Hillsborough County
OGC Case #: 10-3762

Dear Mr. Sandora:

The Department has finished the review of the documents you submitted on January 7, 2011. Those documents demonstrated that Cliff Berry, Inc. had analyzed the fill port sludge in 2006 and 2008 and the waste was determined to be non-hazardous both times. In light of this information, the Department has reviewed and adjusted the penalty computation worksheet, a copy of which is attached.

In an effort to resolve the Department's open enforcement case with Cliff Berry, Inc., the Department is proposing to settle this case in accordance with the terms of the attached Short Form Consent Order. The Department requests that you have the Consent Order signed and forwarded to this office for execution within 15 days of receipt. If the Consent Order is not received by February 25, 2011, the Department will assume you are not interested in settling this case under these terms and will refer this case to the Department's Office of General Counsel for action.

Your cooperation in this matter is appreciated. Please address correspondence or questions regarding this matter to Ms. Shannon Camp at (813) 632-7600, extension 473.

Sincerely,

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

WK/sdc



Florida Department of Environmental Protection

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February 4, 2011

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.: 10-3762

Dear Mr. Doyle:

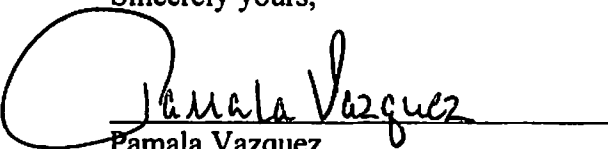
The purpose of this letter is to complete the resolution of the matter previously identified by the Department in the Noncompliance Letter dated September 14, 2010, a copy of which is attached. The corrective actions required to bring your facility into compliance have been performed. The Department 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 \$7,090.00, along with \$300.00 to reimburse Department costs, for a total of \$7,390.00. 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,


Pamala Vazquez
Program Administrator
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 _____, 2011.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Pamala Vazquez
Program Administrator

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.

REVISED 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

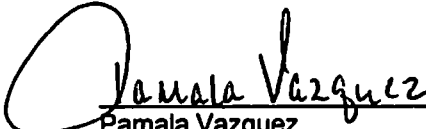
OGC Case #: 10-3762

Date: February 2, 2011

	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 Moderate	Major Moderate	\$11,330 - \$7,090	\$7,090
SUB-TOTAL						\$7,090
DEPARTMENT COSTS						\$300

Total Penalties Including Department Costs:

\$7,390.00



Pamala Vazquez
Program Administrator
Southwest District

2-3-2011

Date

**WORKSHEET
RANKING SYSTEM FOR POTENTIAL FOR HARM**

FACILITY NAME: Cliff Berry, Inc. Date: 2/2/2011

EPA ID No.: FLR000013888 Case #: _____

	Violation	Description	Nature of Waste	Amount of Waste	Release	People	Total Points
1	262.11	Improper waste determination	4	2	4	3	13

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



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
Interim Secretary

September 14, 2010

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

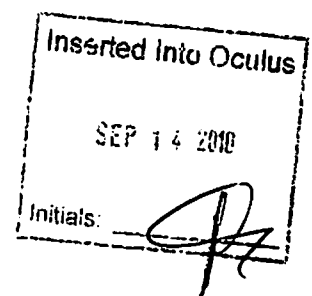
Re: Noncompliance Letter
Cliff Berry, Inc.
FLR 000 013 888
Hillsborough County

Dear Mr. Sandora:

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 at your facility on August 17, 2010 indicates that you may be in violation of Florida Statutes and Rules regarding waste management. Department of Environmental Protection personnel made observations described in the attached inspection report. The report lists the alleged violations of Department Rules along with recommended corrective actions for each violation.

Sections 403.161 and 403.727, Florida Statutes state 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.

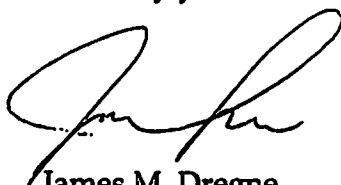
You are requested to contact Ms. Camp at (813)632-7600, extension 473, within fifteen (15) days of receipt of this Noncompliance Letter to arrange a meeting to discuss this matter. The Department is interested in reviewing any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.



Cliff Berry, Inc.
FLR000013888
Noncompliance Letter

Please be advised that this Noncompliance Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), F.S. If you fail to respond within 30 days, under the Department's agreement with the United States Environmental Protection Agency (EPA), you may be designated as significantly out of compliance. This could result in issuance of a formal administrative complaint and assessment of civil penalties if the case is not resolved within 180 days of the date of the inspection. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely yours,

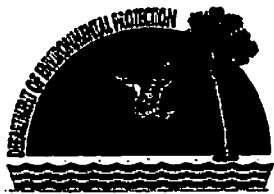


James M. Dregne
Environmental Manager
Hazardous Waste Program

JMD/sdc

Attachment

cc: Kelley Boatwright, HEPC



Florida Department of
Environmental Protection
Hazardous Waste Inspection Report

FACILITY INFORMATION:

Facility Name: Cliff Berry Inc

On-Site Inspection Start Date: 08/17/2010 On-Site Inspection End Date: 08/17/2010

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, Inspector

Other Participants: Danielle Nichols, ES III; Jon Sandora, Facility 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 August 17, 2010 to determine the facility's compliance with state and federal hazardous waste and used oil regulations. Mr. Sandora accompanied the inspectors throughout the inspection. This facility was last inspected by the Department on July 31, 2009.

Process Description:

CBI is a permitted used oil processor as well as a used oil/used oil filter transporter and transfer facility. Operations have not changed since the Department's last inspection. CBI is permitted to bulk and process non-hazardous petroleum contaminated debris and soil in a mixing chamber. They have not yet initiated this process at the Tampa facility.

CBI routinely transports industrial wastewater to the Tampa facility. The Department is concerned about the management of the wastewater. The facility's records are unclear as to how the wastewater is managed at the facility and the Department is concerned that industrial wastewater, petroleum contact water and used oil are being commingled. CBI must provide documentation to the Department demonstrating how each waste stream is handled at the facility and which tank each is placed.

CBI is still utilizing the rail spur located adjacent to Mariani Asphalt. Mr. Sandora stated that the railcar is loaded all at once in one day and a request is immediately sent to CSX for transport. At that time, CSX takes possession of the railcar and a pickup is scheduled. The Department had agreed to this practice as long as the railcar is not storing used oil for more than 24 hours without arranging for CSX to transport it to Miami.

New Potential Violations and Areas of Concern:

Inspection Date: 08/17/2010

Used Oil Processor

Type: Area Of Concern

Rule: 279.54(d)

Question Number: 28.160

Question: Is secondary containment consisting of a floor and dike which are impervious to oil provided for ASTs? Applies to all ASTs regardless of size per 279.54(d & e), 62-710.401(6).

Explanation: During the inspection, the secondary containment for the used oil fill lines was observed to be in disrepair. The metal dike was observed to be "lifting" off the ground and was no longer providing adequate containment.

Corrective Action: The dike for the fill lines must be repaired so as to provide adequate secondary containment for the used oil fill lines in the event that a spill should occur.

Type: Area Of Concern

Rule: 279.52(a)(2)(iii)

Question Number: 28.260

Question: Is spill control and decontamination equipment present?

Explanation: During the inspection, at least one of the facility's spill control kits was observed to be empty.

Corrective Action: CBI must regularly inspected the facility's safety and emergency equipment to ensure they are available and is good condition in the event a spill or other emergency occurs.

Checklist Independent Potential Violations and Areas of Concern

Type: Violation

Rule: 279.52(b)(4)

Explanation: At the time of the inspection, CBI had Dan Stone still listed as the first alternate emergency coordinator. Mr. Stone had left the company three months prior to the inspection.

Corrective Action: CBI must amend the contingency plan with the correct emergency coordinators. The amended plan must be submitted to the Department's permit engineer in Tallahassee.

Type: Violation

Rule: 273.14(e), 273.13(d)(1)

Explanation: At the time of the inspection, CBI had four universal waste lamps located in the loft area that were not in closed, labeled containers.

Corrective Action: CBI must ensure that all universal waste lamps are stored within properly closed and labeled containers.

Type: Violation

Inspection Date: 08/17/2010

Rule: 262.11

Explanation: CBI failed to conduct a proper waste determination on used oil filter sludge generated from the fill port prior to disposing of it as non-hazardous waste. The waste is disposed of at the Okeechobee landfill.

Corrective Action: CBI must ensure that the filter sludge is not characteristically hazardous prior to disposal as a non-hazardous waste. The filter sludge must be annually sampled as generator knowledge cannot be utilized in this case. The Department recommends that the waste be analyzed at least yearly by TCLP.

Summary of Potential Violations and Areas of Concern:

Potential Violations

Rule Number	Area	Date Cited	Explanation
Checklist Independent Violations 279.52(b)(4)		08/17/2010	At the time of the inspection, CBI had Dan Stone still listed as the first alternate emergency coordinator. Mr. Stone had left the company three months prior to the inspection.
273.14(e), 273.13(d)(1)		08/17/2010	At the time of the inspection, CBI had four universal waste lamps located in the loft area that were not in closed, labeled containers.
262.11		08/17/2010	CBI failed to conduct a proper waste determination on used oil filter sludge generated from the fill port prior to disposing of it as non-hazardous waste. The waste is disposed of at the Okeechobee landfill.

Areas of Concern

Rule Number	Area	Date Cited	Explanation
Used Oil Processor 279.54(d)		08/17/2010	During the inspection, the secondary containment for the used oil fill lines was observed to be in disrepair. The metal dike was observed to be "lifting" off the ground and was no longer providing adequate containment.
279.52(a)(2)(iii)		08/17/2010	During the inspection, at least one of the facility's spill control kits was observed to be empty.

Conclusion:

At the time of the inspection, Cliff Berry, Inc. was not operating in compliance with state and federal hazardous waste regulations.

Inspection Date: 08/17/2010

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 D. Camp
PRINCIPAL INSPECTOR NAME

Inspector
PRINCIPAL INSPECTOR TITLE

Shannon D. Camp

PRINCIPAL INSPECTOR SIGNATURE

9/7/2010
DATE

Danielle Nichols
INSPECTOR NAME

ES III
INSPECTOR TITLE

NO SIGNATURE
INSPECTOR SIGNATURE

Jon Sandora
REPRESENTATIVE NAME

Facility Manager
REPRESENTATIVE TITLE

NO SIGNATURE
REPRESENTATIVE SIGNATURE

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.

Memorandum

SOUTHWEST DISTRICT ENFORCEMENT COVER MEMO

TO: PLV 2-3-11 Pamala Vazquez, Program Administrator

THROUGH: WK William Kutash, Waste Program Administrator
JD James Dregne, Hazardous Waste Program Manager 2/3
EK Elizabeth Knauss, Enforcement Coordinator

FROM: SC Shannon Camp, ES II

DATE: February 2, 2011

FILE NAME: Cliff Berry, Inc.

COUNTY: Hillsborough

PROGRAM: Hazardous Waste

TYPE OF DOCUMENT: Revised 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 was lowered due to submitted information.

PENALTY: Not Applicable

Amount: \$ 7,090.00

Costs & Expenses: \$ 300.00

Total: \$ 7,390.00

Secretary Approval Pending

Attachments: