



Florida Department of Environmental Protection

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

August 8, 2011

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

CERTIFIED MAIL: 7009 1680 0001 0454 7583
RETURN RECEIPT REQUESTED
And via Email: mccormack@fredmccormack.com

Mr. Fred McCormack
411 East College Avenue
Tallahassee, FL 32301

Re: Settlement Offer - OGC Case No. 11-0878
January Environmental Services, Inc.
FLD 982 162 943
Polk County

Dear Mr. McCormack:

This letter is to respond to your settlement offer dated July 27, 2011 on behalf of January Environmental Services, Inc. My staff has carefully reviewed the facts of this case and your settlement offer. The information provided by Mr. January at the March 3rd and July 13th enforcement meetings verified that January Environmental Services was not operating in compliance with Federal and State regulations governing used oil processors at the time of the December 20, 2010 inspection. The Department has reviewed each violation and the penalty assessment and found it to be consistent with EPA's Enforcement Response Policy and EPA's RCRA Civil Penalty Policy. Florida's purpose in adopting these enforcement response policies is to ensure consistent, appropriate, and timely enforcement responses across the state. However, we have provided a counteroffer as outlined below that takes some of the issues you raised into consideration and acknowledges the proposed permit application process as a potential for harm mitigating alternative.

The Department met with Mr. January before he began operation, and explained the Department's permitting requirements for used oil processors. There were specific discussions on how Florida regulations differed from Federal regulations with regard to the amount of oil that could be stored without a permit. Florida's time limit for used oil storage at transfer facilities is the same as the Federal time limit.

The Department has cited January Environmental Services, Inc. twice previously for violating this time limit. The first occasion was resolved after the Department issued a Warning Letter and reiterated that exceedances of the 35 day storage time frame required a Department permit. The second incident resulted in formal enforcement through a Short Form Consent Order executed on July 25, 2008. In that case, the Department exercised its enforcement discretion to *settle*

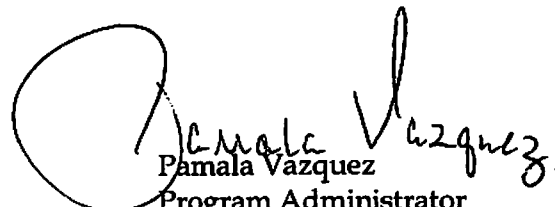
for a lower penalty than authorized under the Environmental Litigation Reform Act. Less than six months after that settlement, Mr. January again began operating without a permit.

While the Department believes Mr. January's failure to acquire a used oil processor permit warranted a Major Potential for Harm ranking in this case because of the adverse effect on statutory and regulatory purposes and procedures for implementing the RCRA program, the Department is willing to reduce the Potential for Harm ranking to Moderate because there was not a release of used oil and the potential for exposure was not substantial. The adjustment in the Potential for Harm ranking reduces the proposed penalty in this case for the 62-710.800(2) and 701.300(1)(a), F.A.C. violations from \$39,000.00 to \$19,099.00. This penalty adjustment would reduce the penalty in this case from \$40,000.00 to \$20,099.00. It is the ultimate goal of the Department to have all companies operating in compliance with State and Federal regulations. The Department is willing to further reduce the penalty in this case by \$10,000.00 contingent on Mr. January successfully acquiring a used oil processor permit and providing financial assurance within 120 days of execution of a consent order.

The Department is willing to resolve this matter through the entry of a Long Form Consent Order that would include the payment of a penalty of \$10,099.00 plus \$300.00 in Department costs, and to make a second \$10,000.00 payment contingent on the successful completion of the permit process and establishment of financial assurance. The Department believes that this offer is a fair offer and a just resolution of this case. Please respond in writing within 10 days of receipt of this letter indicating if Mr. January is willing to accept resolution of this case at the above specified terms. A revised Penalty Computation Work Sheet has been enclosed for your information.

If you have any questions, or wish to discuss this further, please call Jim Dregne at 813/632-7600 ext. 410.

Sincerely yours,


Pamala Vazquez
Program Administrator
Southwest District

PV/jmd

1 Encl.

cc: Compliance File

PENALTY COMPUTATION WORKSHEET

Violator's Name: January Environmental Services, Inc.

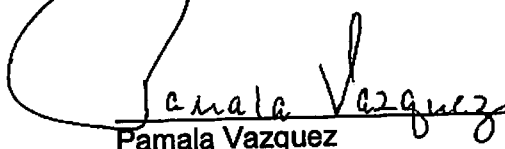
Identify Violator's Facility: FLD982162943 1920 SR 60 W, Bartow

Name of Department Staff Responsible for the Penalty Computations: Jim Dregne

Case #: #WL11-0010HW53SWD Date: August 8, 2011

	Violation Type	Manual Guide	Potential for Harm	Extent of Deviation	Matrix Range	Multi Day	Other Adjustments	Total
1	62-710.800(2) FAC Storing used oil more than 35 days without a used oil processor permit.	UO 86	Major Moderate	Major	\$10,000-8,000 \$4,599- \$3,200	30 +	\$1,000 \$500 per each additional day of violation up to 30 days	\$39,000 \$19,099
2.	279.46(a)(2) & (b)(2) Transporter acceptance & delivery recordkeeping	UO 40	Minor	Moderate	\$500			\$500
3.	279.45 Outdated SPCC Plan	UO 113	Minor	Moderate	\$500			\$500
4.	62-701.300(a) FAC Drummed solid waste management without a permit or other authorization	SW 9.1	Major Moderate	Moderate	\$7,000-6,000 \$3,199- \$2,000			Combined with #1
Subtotal								\$40,000 \$20,099
Acquisition of Used Oil Processor Permit								-\$10,000
Department Costs								\$300
TOTAL								\$40,300 \$10,399.00

Total Penalties for all Violations including Department Costs: ~~\$40,800.00~~ \$10,399.00


Pamala Vazquez

Program Administrator
Southwest District

Date 8.8.2011