



Florida Department of Environmental Protection

Southwest District
13051 North Telecom Parkway
Temple Terrace, Florida 33637-0926
Telephone: 813-632-7600
June 23, 2011

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

CERTIFIED MAIL 7009 1680 0000 2593 3090
RETURN RECEIPT REQUESTED

Mr. Cris January
January Environmental Services, Inc.
1920 Hwy 60 West
Bartow, FL 33830

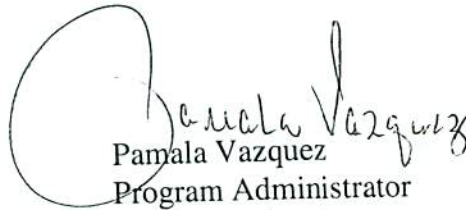
Re: Draft Consent Order - OGC Case #11-0878
January Environmental Services, Inc.
FLD 982 162 943
Polk County

Dear Mr. January:

Enclosed, please find the draft Consent Order which addresses the violations at your facility as noted during the December 20, 2010, RCRA Compliance Inspection. Please review and provide your comments within fifteen days, or if the Consent Order is acceptable, please sign and return for execution.

The entry and compliance with the terms of this Consent Order will end this enforcement case. If you have any questions, or wish to discuss this further, please call Elizabeth Knauss at 813/632-7600 ext. 383.

Sincerely yours,


Pamala Vazquez
Program Administrator
Southwest District

PV/ebk

cc: Randy J. Miller, OGC (Randy.J.Miller@dep.state.fl.us)

Inserted Into OCULUS

NOV - 4 2011

Initials: _____

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

IN THE OFFICE OF THE
SOUTHWEST DISTRICT

Complainant,
vs.

OGC FILE NO. 11-0878

JANUARY ENVIRONMENTAL
SERVICES, INC.,

Respondent.

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and January Environmental Services, Inc. ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to administer and enforce the provisions of the Florida Resource Recovery and Management Act, Sections 403.702, et seq., Florida Statutes ("F.S."), and the rules promulgated and authorized in Title 62, Florida Administrative Code ("Fla. Admin. Code"). The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a "person" within the meaning of Sections 403.031(5) and 403.703(22), F.S.
3. Respondent is a Florida for-profit corporation that operates a used oil and solid waste transfer facility, located at 1920 Highway 60 West, Bartow, FL, in Polk County, Florida ("Facility"). The Department has assigned facility ID Number FLD982162943 to the Facility.

4. The Department finds that the following violations occurred:

a) On or before December 20, 2010, Respondent was storing used oil for more than 35 days at the Facility and did not have a used oil processor permit, in violation of Fla. Admin. Code R. 62-710.800(2).

b) On or before December 20, 2010, Respondent was operating a solid waste transfer station storing containers of waste at the Facility for more than seven days without a permit as required by Fla. Admin. Code R. 62-701.710, in violation of Fla. Admin. Code R. 62-701.300(1)(a).

c) On or before December 20, 2010, Respondent failed to keep records of the EPA identification number of the rail transporter accepting used oil for shipment to a designated processing facility, in violation of 40 CFR 279.46(b), as adopted by Fla. Admin. Code R. 62-710.210(2). Respondent failed to keep records of the name, street address and EPA identification number of all designated used oil destination facilities as required by Fla. Admin. Code R. 62-710.510(1)(f).

d) Respondent did not amend the facility's Spill Prevention, Countermeasure and Control Plan ("SPCC Plan") when Facility operations and emergency contact information changed, in violation of 40 CFR 279.45, as adopted by Fla. Admin. Code R. 62-710.210(2).

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

ORDERED:

5. Respondent shall comply with the following corrective actions within the stated time periods:

- a) Effective immediately, Respondent shall not store used oil more than 35 days until and unless a used oil processing permit is issued for the Facility.
- b) Effective immediately, Respondent shall cease accepting unauthorized materials at the Facility.
- c) Effective immediately, Respondent shall notify the Department in writing in the event that Respondent stores used oil at any location in Florida for more than 35 days without a permit.
- d) Within 10 days of the effective date of this Order, Respondent shall submit a complete combined used oil processing and solid waste processing facility permit application together with the appropriate permit application fee. The application shall include an updated SPCC Plan.
- e) Effective immediately, Respondent shall keep records of all used oil shipments that include the name, address and EPA identification number assigned to both the transporter and destination facility.

6. Within 15 days of the effective date of this Order, Respondent shall pay the Department \$40,800.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$40,500.00 for civil penalties and \$300.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalty in this case includes 2 violations that each warrant a penalty of \$2,000.00 or more.

7. Respondent agrees to pay the Department stipulated penalties in the amount of \$500.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 5 of this Order. The Department may demand stipulated penalties at

any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in paragraphs 8 and 9, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 6 of this Order.

8. Respondent shall make all payments required by this Order by cashier's check or money order. Payment instruments shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Ecosystem Management and Restoration Trust Fund."

9. Except as otherwise provided, all submittals and payments required by this Order shall be sent to the Waste Program Administrator, Department of Environmental Protection, Southwest District 13051 North Telecom Pkwy., Temple Terrace, FL 33637-0926.

10. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

11. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of

Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

12. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for alleged violations up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

13. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order

does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

14. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

15. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

16. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

17. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

18. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

19. This Consent Order is a final order of the Department pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

20. Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Order;
- 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) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- g) A statement of the 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.

The petition 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 Southwest District Office at 13051 N. Telecom Pkwy., Temple Terrace, FL 33637-0926. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

21. Rules referenced in this Order are available at <http://www.dep.state.fl.us/legal/Rules/rulelistnum.htm>.

FOR THE RESPONDENT:

Cris January, President
January Environmental Services, Inc.

Date

DONE AND ORDERED this ___ day of _____, 2011, in Hillsborough County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Pamala Vazquez
Program Administrator
Southwest District

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk,
receipt of which is hereby acknowledged.

Clerk

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35