



Florida Department of Environmental Protection

Southeast District
3301 Gun Club Rd.
MSC 7210-1
West Palm Beach, FL 33406

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Jonathan P. Steverson
Interim Secretary

July 14, 2015

VIA ELECTRONIC MAIL: rgathright@cliffberryinc.com

Richard E Gathright, President and Chief Operating Officer
Cliff Berry, Inc. – Port Everglades Facility
P.O. Box 13079
Fort Lauderdale, Florida 33316

SUBJECT: Department of Environmental Protection v. Cliff Berry, Inc.,
OGC File No.: # 14-0111, EPA ID No. FLR000083071

Mr. Richard E. Gathright:

The State of Florida Department of Environmental Protection (“Department”) finds that Cliff Berry, Inc. (“Respondent”) was in violation of the standards for a hazardous waste transporter per 40 CFR Part 263. Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violations. These actions have since been completed. However, due to the nature of the violations, the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

The Department’s Offer

Based on the violations described above, the Department is seeking \$ 2,130.00 in civil penalties and \$500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$ 2,630.00. The original civil penalty in this matter included 2 violations of \$2,000.00 or more. The Department has considered the Respondent’s request for an in-kind penalty project. The Department acknowledges the Respondent is a private party proposing an environmental enhancement project as described in the DEP’s Settlement Guidelines for Civil and Administrative Penalties (DEP Directive 923), but Department declines to accept Respondent’s offer or to make a counteroffer for an acceptable environmental enhancement project.

Respondent's Acceptance

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return it to the Florida Department of Environmental Protection – Southeast District at 3301 Gun Club Rd., MSC 7210-1, West Palm Beach, Florida 33406 by **July 9, 2015**. The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), F.S. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

By accepting this offer you, Mr. Richard E. Gathright :

- (1) certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
- (2) acknowledge and waive Respondent's right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this offer, once final;
- (3) acknowledge and waive Respondent's right to an appeal pursuant to Section 120.68, F.S.; and
- (4) acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violation(s) referenced above.

Respondent's Performance

After signing and returning this document to the Department,

- (1) Respondent must pay \$2,630.00 in full by **August 1, 2015**.
- (2) Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order 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." Online payments by e-check can be made by going to the DEP Business Portal at:
<http://www.fldepportal.com/go/pay/>
It will take a number of days after this order is final and effective filed with the Clerk of the Department before ability to make online payment is available.

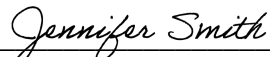
The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.

Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, F.S. Once this letter is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than the Respondent, whose interests will be substantially affected. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. 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.

Please be aware that if the Respondent declines to respond to the Department's offer, the Department will assume that the Respondent is not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact Kathy Winston at 561-681-6756 or at Kathy.Winston@dep.state.fl.us.

Sincerely,



for Jill S. Creech, P.E.
Southeast District Director

FOR THE RESPONDENT:

I, _____ [Type or Print Name], **HEREBY**
ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

By: _____ Date: _____
[Signature]

Title: _____
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this ___ day of _____, 2015, in Palm Beach
County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

for Jill S. Creech, P.E.
Southeast District Director

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

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	Clerk	Date
Attachments:	Notice of Rights Copy of Warning Letter dated November 22, 2013	

Final clerked copy furnished to:
Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)

NOTICE OF RIGHTS

Persons who are not parties to this 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 Order means that the Department's final action may be different from the position it has taken in the Order.

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

- a) The OGC Number assigned to this 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 Order;
- d) A statement of when and how the petitioner received notice of the 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 Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the 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 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 District Office at the address indicated above. 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. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.