



Florida Department of Environmental Protection

Southeast District Office
3301 Gun Club Road, MSC 7210-1
West Palm Beach, Florida 33406
561-681-6600

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Jonathan P. Steverson
Secretary

August 25, 2015

VIA ELECTRONIC MAIL: cb2@cliffberryinc.com

Cliff Berry II, Chief Executive Officer
Cliff Berry Inc. - Port Everglades Facility
P.O. Box 13079
Fort Lauderdale, FL 33316

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

Dear Mr. Berry:

Enclosed for your implementation is a copy of the fully executed and filed Consent Order in the above styled case. The compliance dates and terms of this Consent Order have been accomplished in a timely manner.

Thank you for your cooperation in this matter. If you have any questions concerning this matter, please contact Kathy Winston at 561/681-6756.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jill Creech".

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

08/25/2015
Date

ec: Electronic Archboard/OCULUS
Lea Crandall, OGC, DEP Tallahassee (MS#35)
Shirley Richards, SED



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@cliffberrync.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, Cliff Berry II [Type or Print Name], HEREBY
ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

By:  Date: 8-5-15
[Signature]

Title: President
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 25th day of August,
2015, in Palm Beach County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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.



Clerk

8/25/2015

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.



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

RICK SCOTT
GOVERNOR

Southeast District Office
400 North Congress Avenue, 3rd Floor
West Palm Beach, FL 33401-2913
561-681-6600

HERSCHEL T. VINYARD JR.
SECRETARY

November 22, 2013

Mr. Cliff Berry Sr., Director and Registered Agent
Cliff Berry, Inc.
P.O. Box 13079
Fort Lauderdale, Florida 33316

Re: Warning Letter #WL13-0017HW06SED
Cliff Berry – Port Everglades
EPA ID No. FLR000083071
Broward County

Dear Mr. Berry, Sr.:

On October 11, 2012, a file review and an investigation was conducted concerning operations performed by personnel employed by the above mentioned facility under the authority of Section 403.091, Florida Statutes (F.S.). During this investigation, possible violations of Chapter 403, F.S., and Chapter 62-730, Florida Administrative Code (F.A.C.) were noted.

At the conclusion of the investigation, Department personnel verbally notified you that potential violations occurred concerning operations performed by your facility personnel and you were asked to provide a detailed description of the events surrounding this incident and what was going to be done to avoid it in the future. The potential violations of hazardous waste generator and hazardous waste transporter standards were: generator violations (failure to obtain an EPA ID number, failure to package per DOT standards, and failure to operate in a way to minimize releases) and transporter violations (failure to properly fill out a manifest, failure to provide proper training to emergency response personnel, and failure to place waste in compatible containers). See the attached inspection report dated October 11, 2012, for specific citations and violation descriptions.


Violations of Florida Statutes or administrative rules may result in liability for damages and restoration, and the judicial imposition of civil penalties, pursuant to Sections 403.141, 403.161 and 403.727, Florida Statutes.

Please contact Kathy Winston, at (561) 681-6756 within **15 days** of receipt of this Warning Letter to arrange a meeting to discuss this matter. The Department is interested in receiving 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 – Port Everglades
EPA ID No. FLR000083071
Page 2 of 2

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Florida Statutes. We look forward to your cooperation in completing the investigation and resolving this matter.

Sincerely,

 11/22/13

Gill S. Creech, P.E. Date
Southeast District Director


JSC/JKS/JL/KK/kw

Attachments: Hazardous Waste Inspection Report Dated October 11, 2012

cc: Electronic Archboard\Oculus
Glen Perrigan, DWM via email Glen.Perrigan@dep.state.fl.us



Florida Department of
Environmental Protection
Hazardous Waste Inspection Report

FACILITY INFORMATION:

Facility Name: Cliff Berry Inc - Port Everglades Facility
On-Site Inspection Start Date: 10/11/2012 **On-Site Inspection End Date:** 10/11/2012
ME ID#: 57109 **EPA ID#:** FLR000083071
Facility Street Address: 3400 SE 9th Ave, Fort Lauderdale, Florida 33316
Contact Mailing Address: PO Box 13079, Fort Lauderdale, Florida 33316-0100
County Name: Broward **Contact Phone:** (954) 763-3390

NOTIFIED AS:

CESQG (<100 kg/month)
Transporter
Used Oil

INSPECTION TYPE:

File Review Inspection for Hazardous Waste Transporter facility
File Review Inspection for Used Oil Processor facility
File Review Inspection for CESQG (<100 kg/month) facility

INSPECTION PARTICIPANTS:

Principal Inspector: Kathy R. Winston, Inspector
Other Participants: Steve Collins, EHS officer; Greg Whitaker, Environmental Specialist

LATITUDE / LONGITUDE: Lat 26° 5' 0.9698" / Long 80° 7' 57.7718"

SIC CODE: 4953 - Trans. & utilities - refuse systems

TYPE OF OWNERSHIP: Private

Introduction:

The facility is a permitted used oil processing facility, and is located on an approximately 8.11 acre parcel of land leased from Cliff Berry Family Limited Partnership (landlord). The facility is serviced by city water and septic tank, and employs approximately 60 to 65 people.

The facility is authorized to process used oil, oily wastewater, and used oil filters under permit number 192423 -HO-004, which was modified on May 6, 2008 and was scheduled to expire April 22, 2012. However; the facility submitted a renewal application on February 20, 2012 and is currently responding to a Notice of Deficiencies issued by the Department after review of that application. Cliff Berry, Inc. (CBI) is also requesting modifications to the permit at this time including the addition of five new 12,000 gallon steel tanks to the existing tank farm for storage of Used Oil/Water. They are also requesting permission to begin bulking solid waste in one of the bays of the new maintenance/truck wash building.

Besides being a used oil processor and marketer, CBI is also a registered used oil transporter, used oil transfer facility, used oil filter transporter, used oil filter transfer facility, universal waste transporter, a Conditionally Exempt Small Quantity Generator and, most pertinent to this file review, a Hazardous Waste Transporter.

The last inspection at this facility was on July 30, 2012. The inspectors found only minor violations and the facility return to compliance without enforcement.

Inspection Date: 10/11/2012

Process Description:

This inspection was initiated by a referral from the Southwest District (SWD) office in Tampa. One of their inspectors had performed an inspection on September 19, 2012 at of EQ of Florida, Inc. (EQ) and upon arrival noted that EQ was trying to address an issue with seven drums that had arrived on site improperly packaged. As indicated on documents provided by EQ, the packaging and transporting had been performed by Cliff Berry, Inc. (CBI) and the shipment had been in transit for five days. Also, the employees that were involved in the transport and packaging were based out of CBI's Port Everglades facility. They had placed plastic bottles of a product call Renalin 100 Cold Sterilant (used for cleaning dialysis machines) into metal drums. The three liter bottles, which were supposed to be shipped in an upright position per its' MSDS, had reacted with the metal drums and had started to corrode the drums. One of the seven containers was actually producing visible vapors. Due to compatibility issues this product should never have been shipped in metal drums; as it was highly corrosive. Also, it appeared that, the containers were placed loosely in the drums without enough absorbent around them to keep them upright.

The SWD forwarded all the information they had obtained from EQ to the office in West Palm Beach as CBI Port Everglades is located in the Southeast District (SED). On October 11, 2012, the SED began an investigation to find out who was involved in this situation and what could have been done to prevent it. Going off the paperwork received from SWD, the first place the inspectors visited was NP, who was indicated by the manifest to be the generator of this waste. However; when a search was performed on the address found on the documents (10696 SW 79th Ave., Miami, FL 33376), there was no facility that matched that name existing at that address. Then a yellowpages.com search was done for a facility called NP in Miami and this address came up: 5000 NW 75th Ave., Ste 121, Miami, FL 33155. Armed with this information, the inspectors decided to start their investigation with NP. Upon checking the database, it appeared that NP had never notified with the Department as a generator of hazardous waste and had never been inspected by the state.

As it turned out, NP had nothing to do with this shipment; however, NP was interested in the outcome of the Department's investigation as there company name was being used on official document that didn't originate from their site. The inspectors promised to get back with the NP representative and provide them with whatever information their investigation revealed.

At that point, the inspectors went to a facility called Proline Cargo USA (PCUSA.) The inspectors went there because on the manifest where NP had been indicated as the generation site; someone had crossed NP out and handwritten PCUSA in and had included PCUSA's address. Discussions with one of the facility's owners at PCUSA indicated that the facility that had actually ordered the equipment and sterilizers to be shipped to Columbia was Novismed Corp (NMC.) PCUSA was a freight forwarding company that containerized products ordered by NMC for shipment from the Port of Miami.

Per PCUSA's normal protocol, they had summonsed Customs to come check the load as part of receiving a dangerous goods certification for the export of this product. However; while examining the load, both the facility representative from PCUSA and the Customs agent noted that on one corner of the pallet several of the boxes appeared to be wet indicating that the contents of these boxes had begun to leak. Seeing this as a serious hazmat situation, PCUSA placed a called to Mr. Martinez Sr., the owner of NMC, requesting that he retain an emergency response contractor to come and properly package, what had now become a hazardous waste, for shipment to a designated facility for proper disposal.

Mr. Martinez retained CBI - Port Everglades to come down to PCUSA and properly package the shipment to be forwarded to EQ. Mr. Martinez Sr. did provide CBI with the MSDS for the product and it was indicated on the work order he provided the Department that CBI was aware of the issues with the leaking boxes before they arrived on site. Although the PCUSA representative was unfamiliar with these types of operations, it appeared to her that CBI proceeded with caution and seemed to be following the types of protocols that would need to be met to properly eliminate any risk involved with transporting this chemical safely to its' destination.

After discussing the situation with PCUSA, the inspectors proceed to the proper address for NMC

Inspection Date: 10/11/2012

provide by PCUSA. Up until that point, there had been confusion as to the actual address of NMC; as the manifest indicated a mailing address in Tallahassee and a physical address in Miami, neither of which was correct.

Upon arriving at the correct address, the inspector discovered another business there that provided computer consulting and was owned by Mr. Martinez's son. Mr. Martinez Sr. was not at the office at that time; however, his son placed a call to his father and then handed the phone over to one of the inspectors. The inspector proceeded to ask Mr. Martinez Sr. basically the same questions that were asked of PCUSA to ensure that their stories matched and they did. It was apparent to the inspector, at that point, that the responsibility for the situation that was found at EQ rest strictly on the shoulders of CBI.

New Potential Violations and Areas of Concern:

Violations

Type: Violation
Rule: 262.12(a)
Explanation: Cliff Berry Inc. picked up waste in excess of 1000 kgs from a generator where the facility should of obtained a temporary EPA ID number. CBI indicated on the manifest that the facility was a CESQG
Corrective Action: At this point, there is no corrective action that can be performed as the shipment has already reached its' end designation.

Type: Violation
Rule: 263.30
Question Number: 1.160
Question: Is there evidence of discharge of hazardous waste?
Explanation: CBI improperly packaged hazardous waste and when the shipment was received at its' end designation, the corrosive liquids they had packaged were corroding the drums and one of the seven drums was producing vapors.
Corrective Action: There is no corrective action that can be performed at this time; as the designation facility handled the issue and repackaged the waste for proper disposal.

Type: Violation
Rule: 263.20
Question Number: 1.40
Question: Do the manifests contain at least:
Explanation: Cliff Berry picked up waste from a generator located in Miami and took the waste to their transfer facility in Miami. Six days later the waste arrived at the designated facility; however, the manifest doesn't indicate a second transporter or that CBI was the second transporter.
Corrective Action: This error can be addressed when CBI corrects the error in the manifest concerning the facility's mailing address. After these corrections are made, the

Inspection Date: 10/11/2012

please be sure to supply the Department and any involved parties with the corrected manifest. Also, supply the Department with a copy of the transporter's acceptance and delivery logs showing this waste's arrival and departure from the Miami Terminal transfer facility.

Type:	Violation
Rule:	263.20
Question Number:	1.40
Question:	Do the manifests contain at least:
Explanation:	Cliff Berry Inc. filled out a manifest for waste it picked up using the wrong name for the generator and the wrong mailing address.
Corrective Action:	Please reissue the manifest with the name Novismed Corp. instead of Novis Pharmaceuticals and correct the mailing address to the registered address found in the State of Florida's Division of Corporations for this company. Redistribute this manifest to all involved parties.

Conclusion:

Once the inspector returned to the office, a call was placed to CBI and the inspector spoke with one of the company's EHS officers. They verified that the name of the driver and chemist involved in this incident were indeed employees of CBI. Then the inspector asked whether CBI was aware of the situation that had occurred at EQ and the representative acknowledged that he was. He explained that EQ contacted them when the load arrived because EQ intended to send another bill to CBI to cover their extra cost for manhours and disposal. The Department expressed to the representative that we considered this a serious situation and asked CBI to provide a detailed description of the events surrounding this incident and what was going to be done to avoid it in the future.

On October 16, 2012, the Department received a two paragraph correspondence from CBI dated October 12, 2012. The letter stated that CBI had been hired by Mr. Martinez, the owner of NMC, to package expired oxidizing corrosive liquids for transport to EQ. However, upon arriving on site, they discovered that one of the boxes had been leaking. At this point, they called in extra help and proceeded to soak up the leaked material with Oil Dri, which was then shoveled into a drum. They indicated that even the cardboard that had become wet was packaged in that drum. They then packaged up the rest of the bottles as lab packs and took the drums to the CBI Miami terminal. There the drums were stored until they were loaded onto a truck the following Wednesday for delivery to EQ the next day. After their discussion with CBI, the Department examined the manifest again and realized that CBI didn't indicate a second transporter on the manifest that was received by EQ.

CBI expressed that there was still an ongoing investigation related to this matter. They were attempting to determine if any safety procedures were violated or if they needed to adjust their internal procedures for handling similar situations in the future. The Department has not received any additional communications from CBI concerning the matter.

Refer to the October 11, 2012 inspection (file review) reports for NP and NMC for information on this matter.

Inspection Date: 10/11/2012

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.

Kathy R. Winston _____

PRINCIPAL INSPECTOR NAME

Inspector _____

PRINCIPAL INSPECTOR TITLE



PRINCIPAL INSPECTOR SIGNATURE

2/7/2013 _____

DATE

Supervisor: Karen Kantor

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.