

## Honey, Kelly

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**From:** Honey, Kelly  
**Sent:** Friday, June 24, 2016 7:16 PM  
**To:** Vaughn, Richard  
**Subject:** for review and signature - EQ Counteroffer review/response

Hi Rick.

Here's the beastie. No one – not even EPA – can say this penalty wasn't well thought out! ;)

### [EQ Drafts](#)

Also – I didn't prepare any email for CD. My (unasked) opinion is to either hand it to them at the meeting or email it ourselves (and by that I mean you or I).

Have fun. Maybe I'll see you this weekend. WAH!

*Kelly Honey  
FL Department of Environmental Protection  
Compliance Assurance Program  
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Please Note: Florida has a very broad public records law. Most written communications to or from state officials regarding state business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.

	<b>Violation Type</b>	<b>Potential for Harm</b>	<b>Extent of Deviation</b>		<b>Total</b>
1	Closed container	Minor	Minor	2130	\$1,000
2	Label container	Minor	Minor	0	Combined #1
3	Training	Moderate	Minor	10165	\$9,000
4	Containment	Moderate	Moderate	9000	\$9,000
5	One manifest discrepancy	Minor	Minor	0	Combine #15
6	Failure to inspect	N/A	N/A	0	N/A
7	Containment	Moderate	Moderate	0	Combine #4
8	Failure to inspect	Minor	Minor	0	Combine #3
9	Proper inspection form	Minor	Minor	3545	Combine #3
10	Permitted treatment	N/A	N/A	0	N/A
11	Treated waste storage	N/A	N/A	0	N/A
12	Maximum volume SMU #11	Minor	Moderate	15580	\$12,000
13	Sump waste characterization	Minor	Minor	15580	\$3,000
14	Unloading time limit	Minor	Moderate	9210	\$7,090
15	Management Method Codes	Minor	Minor	2130	\$900
16	Solid waste storage	Minor	Moderate	1199	\$750
17	2-mixers	Minor	Minor	0	No Penalty

Sub Total	68539	\$42,740
Economic Benefit	1000	\$1,000
Department Costs	1000	\$1,000
<b>Total</b>	<b>70539</b>	<b>\$44,740</b>

<b>Comment</b>
This was a single container in an active rainwater clean up
This was a single container in an active rainwater clean up
Deleted
Deleted
Included elsewhere in calculation
Interpretation disagreement, 10-day
Waste characterized as TC metals by generator knowledge





# Florida Department of Environmental Protection

Southwest District Office  
13051 North Telecom Parkway  
Temple Terrace, FL 33637-0926

Rick Scott  
Governor

Carlos Lopez-Cantera  
Lt. Governor

Jonathan P. Steverson  
Secretary

DATE

Mr. Gene Cieply, General Manager  
EQ Florida, Inc.  
2002 North Orient Road  
City, State Zip  
[gene.cieply@eqonline.com](mailto:gene.cieply@eqonline.com)

Re: OGC #16-0275  
EQ Florida, Inc.  
EPA ID #FLD981932494  
Hillsborough County

Dear Mr. Cieply:

The Department of Environmental Protection (Department) has received the correspondence June 14, 2016, from EQ Florida, Inc., (EQ) responding to the Department's assessed penalty and draft Consent Order #16-0275 dated May 19, 2016. The Department cannot accept your penalty counteroffer of \$44,740.00. After carefully reviewing your offer, it was found it to be inconsistent with the Department's Compliance & Enforcement Process for DEP's Hazardous Waste Program (08/20/2014), as well as EPA's Enforcement Response and RCRA Civil Penalty Policies. Florida's purpose in adopting these enforcement response policies is to ensure consistent, appropriate, and timely enforcement responses across the state.

It should be noted that EQ has been inspected by the Department's Hazardous Waste Section five times since 2009. Additionally, there was a formal enforcement action with penalties, associated with a self-reported incident in 2014, and the compliance inspection conducted in 2011 also resulted in a formal enforcement action with penalties. Moreover, EQ is a permitted hazardous waste treatment, storage and disposal facility (TSDF) and also provides technical assistance to its customers through EQ Technical Assistance. EQ is responsible for ensuring that hazardous waste it receives is stored, disposed of, and/or treated in accordance with 40 CFR Part 268. As such, and based on the inspection history, the Department expects EQ to maintain a high level of compliance with both its permit and the applicable rules.

Mr. Gene Cieply, General Manager  
OGC #16-0275

The penalty in this case was initially \$79,699.00, which includes a modifier for the economic benefit of noncompliance for the delayed cost of applying for the permit modification. The assessed penalty also includes the payment of Department costs of \$1,000.00.

Calculations of penalties are based on DEP Directive 923, Settlement Guidelines for Civil and Administrative Penalties, the Department's Guidelines for Characterizing Hazardous Waste Violations, both of which are available online to the general public or in electronic format via e-mail, except as noted. Guide numbers indicated in the penalty discussions below refer to the latter document. In addition, Consideration was given to EQ's earlier responses, both verbal and written, to the Department's written 2015 inspection report when calculating the assessed penalties. Penalties were generally assessed at the top of the penalty matrix ranges for the reasons stated on the first page of this letter. As indicated, the purpose of utilizing these documents is to ensure consistency throughout the state.

The following is the Department's detailed response to each citation and EQ's counteroffer. The responses are numbered and ordered in accordance with the Revised Penalty Computation Worksheet dated May 18, 2016, and provided to EQ on May 19, 2016.

1). 40 CFR 262.34(a)(1)(i)

Original Penalty: \$2,130 / Counteroffer: \$1,000 / Final Penalty: \$2,130

The citation occurred because EQ was storing hazardous waste as in a container that was not closed, and at the time of the inspection, no waste was being removed or added to the container. EQ representatives have agreed that the 275-gal container was open, but states that work was actively occurring in the area around the container and it was not unattended at any time. EQ believes the Department is too rigid in its interpretation of the rules. EQ has requested that the Extent of Deviation be changed from Moderate to Minor.

Regarding EQ's belief that the Department's interpretation of this rule is too rigid, the Department respectfully disagrees. The language of the rule is very clear and is not open to interpretation: *A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.* The container in question is regulated as a storage container because it contained >55-gallons of hazardous waste. Additionally, the Department has discussed this issue with EQ in the past and provided EQ with a copy of EPA's guidance on what constitutes a "closed container" on January 17, 2012.

[http://depdms.dep.state.fl.us:80/Oculus/servlet/shell?command=getEntity&\[guid=2.361284.1\]&\[profile=Permitting\\_Authorization\]](http://depdms.dep.state.fl.us:80/Oculus/servlet/shell?command=getEntity&[guid=2.361284.1]&[profile=Permitting_Authorization])

The penalty was assessed based on Guide HW-010, which states clearly that when a generator fails to keep a container closed as required, the extent of deviation from the Rule is Major. Based on direction from Southwest District (SWD) Senior Management,

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however, this was reduced to Moderate, which resulted in a lower penalty range for this citation. The Department is therefore unable to reassess the penalty amount.

2). 40 CFR 262.34(a)(2) and (3)

Original Penalty: combined with #1 / Counteroffer: combined with #1 / Final Penalty: combined with #1

No change was requested regarding the penalty for this item. EQ does request that the extent of deviation from the rule be changed to Minor. Guide HW-005 clearly states that the extent of deviation is to be based off the % of containers involved. In this case, the container represented >60% of the total containers subject to the generator requirements.

3). 40 CFR 264.16(a)(1)

Original Penalty: \$11,330 / Counteroffer: \$9,000 / Final Penalty: **\$10,165**

Owners and operators of hazardous waste TSDFs are required to ensure that facility personnel successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of Part 264. The citation occurred because based on observations and discussions during the inspection and provided records, personnel did not have sufficient training, as indicated by the numerous alleged violations at the facility. In its responses, EQ expressed concern about the Department's "zero-tolerance" policy because expecting perfection is unreasonable. EQ also requests that the extent of deviation from the rule be changed from Moderate to Minor.

As discussed during the meeting on November 20, 2015, the Department does not have a "zero-tolerance" policy regarding training. There were more than 15 alleged violations noted, and some of the citations involved numerous instances of alleged noncompliance. For example, 78% of the 97 hazardous waste manifests reviewed were incorrectly completed. Nearly every "pop up" containment structure was observed to be in poor condition, and most of those had actual breaches, yet inspection records for that day indicated they were all "satisfactory." If there had been one or two incorrect manifests, or one or two containments in poor condition marked as "satisfactory," etc., this violation would not have been cited. The rule requires that employees be able "to perform their duties in a way that ensures the facility's compliance."

The penalty was assessed based on Guide HW-208, which states clearly that when training of TSDF employees is inadequate, the extent of deviation from the Rule is Moderate, however, the amount proposed by EQ falls within the assessed penalty range. The Department is willing to reduce the assessed penalty to \$10,165, which is the midpoint between the assessed amount and EQ's proposal.

4). 40 CFR 264.175(a)

Original Penalty: \$11,330 / Counteroffer: \$9,000 / Final Penalty: **\$9,000**

The citation occurred because nearly every single "pop up" containment observed throughout the facility was in poor condition and most had actual tears and / or holes. EQ is proposing a reduction of \$2,330. Based on the fact that this is the first citation in at least the last five years, the Department agrees.

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- 5). 40 CFR 264.71(a)(2)  
Original Penalty: combined with #15 / Counteroffer: combined with #15 / Final  
Penalty: combined with #15

There was no change requested regarding this item.

- 6). 40 CFR 264.195 / Permit Conditions II.C.8 and II.E.4.  
Original Penalty: N/A / Counteroffer: N/A / Final Penalty: N/A

EQ provided records of tank inspections to the Department showing that the alleged violation did not exist at the time of the inspection. It was subsequently marked for deletion.

- 7). Permit Condition II.B.14, App 8.2  
Original Penalty: combined with #4 / Counteroffer: combined with #4 / Final  
Penalty: combined with #4

There was no change requested regarding this item.

- 8). 40 CFR 264.15  
Original Penalty: combined with #3 / Counteroffer: combined with #3 / Final  
Penalty: combined with #3

There was no change requested regarding the penalty for this item. EQ does request that the extent of deviation be changed to Minor. Guide HW-136 states that the extent of deviation from the rule is Major, when no inspections are performed and Minor if inspections are done, but there are incomplete or no records kept. Moderate was selected at the time of the initial computation, because it was unclear if the inspections were actually conducted. Based on discussions after the inspection, **the Department will change the extent of deviation to Minor, as requested.**

- 9). Permit Condition II.B.5  
Original Penalty: \$7,090 / Counteroffer: combined with #3 / Final Penalty:  
**\$3,545**

The citation occurred because the daily Facility Inspection Log in use at the time of the inspection was not the form provided by EQ as part of its application and required by the permit. The effective date of the form in use at the time of the inspection is 12/03/2012. EQ requests to change the potential for harm to Minor. The penalty was assessed based on Guide HW-096, which requires that potential for harm to be calculated using a provided formula, which is described below in #12. In this case, the final score was 18, which means the alleged violation is considered to have a Moderate potential for harm.

EQ also requests that this penalty be combined with the penalty assessed for #3 (inadequate training). The penalty will not be combined with #3, however, at the direction of SWD Senior Management, it has been reduced by 50%.

- 10). Permit Conditions II.C.2. and 5. / II.E.1  
Original Penalty: N/A / Counteroffer: N/A / Final Penalty: N/A

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EQ provided records that clearly demonstrated that the alleged violations did not exist at the time of the inspection. The violations were subsequently marked for deletion.

11). N/A

Original Penalty: N/A / Counteroffer: N/A / Final Penalty: N/A

The alleged violations originally included for this item (i.e., failure to label treated HW roll-offs, failure to comply with the WAP regarding treated HW, storing HW in unauthorized areas) were determined after the inspection to be sufficiently similar to items already cited elsewhere in the inspection report.

12). Permit #34875-HO-11: Authorization to operate a Hazardous Waste Transfer Facility; Appendix A of the permit

Original Penalty: \$15,580 / Counteroffer: \$12,000 / Final Penalty: \$15,580

The permit states that the Permittee is authorized to operate a transfer facility on site anywhere on the paved lot of the south property identified on Attachment D of the permit. It also states that the maximum storage shall not exceed 20,000 gallons or 100-cubic yards. The citation occurred because at the time of the inspection, there were fourteen 20-cubic yard roll-offs containing waste located on the paved lot of the south property.

EQ requests that the potential for harm be changed from Moderate to Minor, and that the extent of deviation from the rule be changed from Major to Moderate. Additionally, EQ disagrees with the Department's position, and states that the 10-day transfer facility (SWMU #11) is clearly identified in both the permit and the application figures as the 10-day transfer facility. EQ also states that treated waste is not placed in the 10-day transfer facility (SWMU #11), and that the 20,000-gallon or 100-cubic yard capacity pertains only to the 10-day transfer facility (SWMU #11) as identified in the figures, and does not apply to other material that may be staged in the same location as SWMU #11.

The Department respectfully disagrees with this interpretation of the language in the Authorization, which states "transfer facility waste must be located on the paved lot within the 8<sup>th</sup> Ave. property as identified in Attachment D." EQ agreed that the transfer facility, as described in the Authorization and laid out in the associated plans, does include the entire paved lot of the south property. Initially, EQ also contended that only the small spot marked with "11" on the permit figure constituted the Transfer Facility, the treated waste was not at the location marked "11," but was in another area of the paved lot ("the staging area"). It was pointed out that the small area marked "11" was actually identified as the "transfer facility/staging area." EQ also agreed that historically, it has stored 10-day transfer waste and other, staged wastes throughout the entire paved lot, as needed. Moreover, the language in the Authorization does not specify what type of waste is subject to the capacity limits.

The penalty was assessed based on Guide HW-096, which requires that potential for harm to be calculated using a provided formula. The formula accounts for the nature of the waste, the volume of the waste, the risk potential of the waste, whether there was a discharge or not, and the number of people potentially exposed. A numerical value is



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assigned to each category based on the case specifics and a score is generated. The potential for harm is then assigned based on this score. For example, a violation that ends up with a final score of 7-12, is considered to be have a Minor potential for harm. In this case, the final score was 18, which means the alleged violation is considered to have a Moderate potential for harm. A copy of the worksheet used to calculate the potential for harm was included with the draft Consent Order.

Guide HW-096 states that the extent of deviation from the rules is to be based on the significance of the findings. In this case, the Department determined that the volume of waste in the Transfer Facility was approximately 252-cubic yards, more than 2.5 times the permitted amount. In addition, the extra volume was not accounted for in the estimated closure costs. For these reasons, the Department is unable to reassess penalty amount.

13). 40 CFR 264.13(a)(1) / Permit Condition II.A.5

Original Penalty: \$15,580 / Counteroffer: \$3,000 / Final Penalty: \$15,580

The citation occurred because EQ treats liquid waste that has been declared hazardous from the sump in the north (nonhaz) side of the Waste Processing Building without fully characterizing the waste to determine if there are any underlying hazardous constituents (UHCs). The Rule requires owners or operators who treat, store, or dispose of any hazardous wastes to obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, the analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with Part 264 and Part 268.

EQ is currently permitted to treat characteristically hazardous metal bearing and corrosive wastes that do not contain organic UHCs listed in 40 CFR 268.48. The waste from the north sump is declared hazardous, but no analyses were being performed to determine whether there are any UHCs that would preclude its onsite treatment, or that would need to be included to ensure the universal treatment standards are met prior to land disposal. The sump is located next to the solid waste treatment tank and the used oil transfer facility area. Additionally, the formal enforcement action resulting from the self-reported incident in November 2014, included a violation of this same rule.

Finally, it has consistently been EPA's position that the disposal facilities remains responsible for ensuring that restricted wastes are not disposed except in full compliance with all applicable treatment standards. A "rule of strict liability" applies under RCRA, so that a disposal facility can be liable for improper disposal even if it does so in the good-faith belief that a treatment standard does not apply. (RCRA Online Document #13630) In this case, EQ is also responsible as the generator for properly characterizing its waste and complying with the Land Disposal Restriction notices.

In its counteroffer, EQ requests the penalty reduction because the waste is characterized as TC toxic for metals only, based on generator knowledge. Since the waste generated by EQ in the solid waste portion of the waste processing building may be potentially contaminated with customers' solid wastes, hazardous wastes (as the sides are not

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physically separated) used oil, and possibly unknowns, there is no way to properly characterize the waste without analyzing it.

EQ has also requested that the potential for harm and the extent of deviation from the rule both be changed to Minor. The penalty was assessed based on Guide HW-149, which requires that potential for harm to be calculated using a provided formula as described above in #12. In this case, the final score was 20, which means the alleged violation is considered to have a Moderate potential for harm. Guide HW-149 also clearly states that the extent of deviation from the rule is Major when a TSDF does not properly obtain a detailed chemical and physical analysis of a waste prior to treatment, storage, or disposal. For these reasons, the Department is unable to reassess the penalty amount.

14). Permit Conditions II.A.5 & II.B.15

Original Penalty: \$11,330 / Counteroffer: \$7,090 / Final Penalty: **\$9,210**

The citation occurred because EQ took more than five calendar days to incoming hazardous waste that was to be treated on site. EQ's permit states that vehicles with incoming shipments of hazardous waste shall be unloaded into the appropriate storage area within five (5) calendar days of the vehicle's arrival at the facility. EQ requests also that the potential for harm be changed to Minor.

The penalty was assessed based on Guide HW-096, which requires that potential for harm to be calculated using a provided formula as described above in #12, however, the amount proposed by EQ falls within the assessed penalty range. The Department is willing to reduce the assessed penalty to \$9,210, which is the midpoint between the assessed amount and EQ's proposal.

15). 40 CFR 264.71

Original Penalty: \$2,130 / Counteroffer: \$900 / Final Penalty: \$2,130

The citation occurred because 78% of the manifests reviewed as part of this inspection were found to have incorrect Method Management Codes recorded. Owners and operators of TSDFs are required to complete hazardous waste manifests in accordance with Section IV of the Appendix to Part 262. Specifically, the first TSDF that receives manifested hazardous waste is required to fill in Items 19 and 36 with the most appropriate Hazardous Waste Report Management Method code for each waste listed. The manifests are then returned to the generators, who use them to complete reports that are required to be submitted to the EPA/Department every two years. The incorrect information will therefore be perpetuated in those submitted reports.

EQ also requests that the extent of deviation from the rule be changed to Minor. The penalty was assessed based on Guide HW-123, which clearly states that the extent of deviation from the rule is Moderate if the TSDF fails to comply with the manifest requirements but still has records. For these reasons, the Department is unable to reassess the penalty amount.

16). Permit Condition V.B.10.a.(2)

Original Penalty: \$1,199 / Counteroffer: \$750 / Final Penalty: \$1,199

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The citation occurred because EQ stored unprocessed solid waste outside the treatment building. Section 6.1.5 of the Engineering Report in the EQ's permit application indicates that the area outside the treatment building is for staging of outbound solids or solidified wastes only. EQ also requests that the extent of deviation from the rule be changed to Minor.

The penalty was assessed based on the Department's Guidelines for Characterizing Solid Waste Violations (06/28/2013), which states that alleged violations involving  $\geq 50$ -cubic yards of Class I or Class III wastes are major deviations from the rule. For these reasons, the Department is unable to reassess the penalty amount.

17). Permit Condition V.B.10.b.(1)

Original Penalty: None / Counteroffer: None / Final Penalty: None

There was no change requested regarding the penalty for this item. EQ does request that the extent of deviation be changed to Minor, however, in accordance with the Department's Guidelines for Characterizing Solid Waste Violations (06/28/2013), alleged violations involving  $\geq 50$ -cubic yards of Class I or Class III wastes are major deviations from the rule.

After evaluating EQ's counteroffer, the adjusted penalty is now \$68,539.00, plus \$1,000.00 for the economic benefit and \$1,000.00 in Department costs, for a total of \$70,539.00. The Department believes that this offer is a fair offer and a just resolution of this case. If you choose not to settle this case as indicated, this matter will be referred to the Department's Office of General Counsel for further agency action.

Your cooperation in this matter is appreciated. Please address correspondence or questions regarding this letter to Kelly Honey at 813-470-5786.

Sincerely,

Richard Vaughn  
Environmental Manager  
Southwest District Compliance Assurance Program

RV/kmh