

## Knauss, Elizabeth

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**From:** Bahr, Tim  
**Sent:** Thursday, March 16, 2017 9:55 AM  
**To:** Yeargan, Mary  
**Cc:** Vaughn, Richard; Knauss, Elizabeth; Boatwright, Kelley M.; Walker, Kim (Waste); Burns, Bill; Perrigan, Glen; Scarborough, Jill R.  
**Subject:** RE: For Review and Signature - Peer Review Memo Synergy Recycling of Central Florida FLR000053611  
**Attachments:** Warning Letter Synergy.docx; Hazardous Waste Peer Review Checklist Synergy Recycling of Central Florida.docx; Peer review request memo Synergy Recycling.doc; synergy recycling report FLR000053611.pdf; Penalty Worksheet Draft\_1.doc

Hi Mary et al,

The Division of Waste Management has concluded its review of the proposed actions for Synergy Recycling of Central Florida, and concurs with the proposed enforcement response and initial penalty calculation.

Thanks,

Tim J. Bahr, P.G., Assistant Director  
Division of Waste Management  
850-245-8790

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**From:** Boatwright, Kelley M.  
**Sent:** Wednesday, March 08, 2017 8:33 AM  
**To:** Bahr, Tim <Tim.Bahr@dep.state.fl.us>  
**Cc:** Vaughn, Richard <Richard.Vaughn@dep.state.fl.us>; Knauss, Elizabeth <Elizabeth.Knauss@dep.state.fl.us>  
**Subject:** FW: For Review and Signature - Peer Review Memo Synergy Recycling of Central Florida FLR000053611

Hi Tim! Please see the link below for the peer review information. Thanks!

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**From:** Vaughn, Richard  
**Sent:** Tuesday, March 07, 2017 2:34 PM  
**To:** Boatwright, Kelley M. <[Kelley.M.Boatwright@dep.state.fl.us](mailto:Kelley.M.Boatwright@dep.state.fl.us)>  
**Cc:** Knauss, Elizabeth <[Elizabeth.Knauss@dep.state.fl.us](mailto:Elizabeth.Knauss@dep.state.fl.us)>  
**Subject:** FW: For Review and Signature - Peer Review Memo Synergy Recycling of Central Florida FLR000053611

Kelley,

For your review and signature before sending on to Mary and then to Tim Bahr, please find at the link below the warning letter, peer review, inspection report and penalty calculations for Synergy Recycling of Central Florida, FLR000053611.

Please let me know if you have any questions.

Thank you,

Rick Vaughn  
Environmental Manager

Compliance Assurance Program  
Florida Department of Environmental Protection

[Richard.Vaughn@dep.state.fl.us](mailto:Richard.Vaughn@dep.state.fl.us)

Office: 813-470-5799

13051 N. Telecom Parkway

Temple Terrace, FL 33637-0926

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**From:** Knauss, Elizabeth

**Sent:** Friday, March 03, 2017 2:58 PM

**To:** Vaughn, Richard <[Richard.Vaughn@dep.state.fl.us](mailto:Richard.Vaughn@dep.state.fl.us)>

**Subject:** For Review and Signature - Peer Review Memo Synergy Recycling of Central Florida

The draft peer review, penalty proposal, draft warning letter and final inspection report pdf are at the link below:

**File/Folder Hyperlink** [file:///fldep1/swd/all\\_common/Sites/Polk/HW/Synergy%20FLR000053611](file:///fldep1/swd/all_common/Sites/Polk/HW/Synergy%20FLR000053611)

**Special Instructions to Bizhub:** Attach penalty worksheets to Peer Review Memo

ccs:

Processor: Richard Vaughn

[SWD\\_Clerical@dep.state.fl.us](mailto:SWD_Clerical@dep.state.fl.us)

Oculus Information

Catalog: Hazardous Waste

Profile: Enforcement Legal

Facility Site ID: FLR000053611

Document Type: Penalty Authorization Related

Facility Type: Registered Used Oil Handler

Inspection Related N/A

Document Subject: Peer Review Memo

# Warning Letter Peer Review Checklist

## Hazardous Waste


Facility Name: Synergy Recycling of Central Florida EPA ID #: FLR000053611 Peer Review Conducted By: Jill Scarborough Date: 03/09/17				
		YES	NO	Notes
	<b>FORMAL OR INFORMAL RESPONSE</b>			
	If the facility is a first time violator, did the facility know or have reason to know actions were illegal?		N/A	Not a first time violator
	If the facility is a first time violator, did the facility refuse to correct the problems?		N/A	Not a first time violator
	If the facility is a first time violator, did the violations result in harm to public health or the environment?		N/A	Not a first time violator
	If the violations caused no actual harm to human health or the environment this time, did one or more violations create a situation where a significant potential threat to human health (including workers at the facility) or the environment occurred?	X		Possible exposure to workers or others
	Did the violations deviate substantially from the terms of a permit, order, agreement, or from RCRA statutory or regulatory requirements?	X		Deviation from both permit conditions and RCRA requirements
	If the facility has received a CAV/CEI from DEP in the past, were the new violations similar to issues identified in the previous inspection.	X		Repeat violations
	If the facility has been notified of their waste management responsibilities and provided compliance assistance by the county SQG program (per 403.7234), should the violations have been avoided?		N/A	County has accompanied DEP on previous inspections but not provided any compliance assistance separately
	Does the facility have a history of recalcitrant or non compliant behavior?	X		Previous non-compliance
	Would taking an enforcement action in this situation enhance consistent application and statewide consistency?	X		
	If the violations facilitated an apparent economic benefit for the facility, will enforcement eliminate economic benefits gained by non compliance?	X		
	Will enforcement provide a financial disincentive to discourage future violations not only for the violator but also by others contemplating similar activities?	X		
	Did the facility <u>not</u> adequately address all violations within 240 days?		N/A	Not a re-class
	Was the facility identified as a Significant Non Complier (SNC) in data?	X		

Florida Department of  
Memorandum

Environmental Protection

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TO: Tim J. Bahr, P.G., Program Administrator  
Permitting and Compliance Assistance Program

THROUGH: Mary E. Yeargan, P.G., Director  
Southwest District  
  
Kelley Boatwright, Assistant Director  
Southwest District  
  
Richard Vaughn, Environmental Manager   
Southwest District Compliance Assurance Program

FROM: Elizabeth Knauss, Environmental Consultant  
Southwest District Administration Program

DATE: MARCH 8, 2017

SUBJECT: Peer review request – Synergy Recycling of Central Florida

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We are requesting a peer review for the following case:

**Alleged Violators:** Synergy Recycling of Central Florida

**Location of facilities:** 3800 W. Lake Hamilton Dr.  
Winter Haven, FL 33881  
Polk County

**Facility ID:** FLR000053611

**Facts necessary to conclude a violation has occurred:**

Synergy Recycling of Central Florida, LLC applied for and obtained a used oil processing permit after acquiring a used oil transfer facility in 2008 that was previously operated by On-Time Environmental Services. The permit was issued in 2010, and renewed effective March 2, 2015. The previous and current facility managers have operated or were employed by a major used oil transporter and processor located in Plant City, Hillsborough County. Synergy's operations were inspected by the Department in 2009, 2011, 2012, 2013 and 2015. Violations noted during these inspections were resolved through informal enforcement, except for the 2009 inspection that was resolved through a short form Consent Order, OGC Case 10-0726, with a penalty of \$2,700.00.

A routine compliance inspection was conducted beginning January 27, 2017, with a follow up inspection February 3, 2017 specifically to review records that were not available the first day of



the inspection due to the absence of the manager. During the follow up, it was found that required records were not maintained on site, and additional information requests were made to obtain copies from the transportation and disposal companies that Synergy was using for oil shipped from the facility.

Most of the missing records related to shipments of used oil by rail and documentation regarding used oil specification claims. During the inspection, the facility manager stated that the facility had stopped claiming that used oil shipped by the facility met the used oil fuel specification in 40 CFR 279.11 after the Department's February 27, 2015 inspection. In 2015 Synergy was cited for failure to have a certified laboratory conduct specification and flash point testing before oil was shipped to a re-refinery. Testing was being conducted by the receiving facility, post shipment. Review of Synergy's 2015 annual report showed that the company continued to ship all used oil as on specification fuel in 2015, and no analytical records were on site, available for inspection.

Vertex Energy was contacted regarding this discrepancy, and the company stated that it only accepted on-specification oil for re-refining. The company conducts pre-qualification analyses prior to the shipment for each rail car, as well as post shipping verification analyses. The Department requested and Vertex supplied copies of analyses conducted on nine rail cars shipped on three separate dates. The analyses indicated that the oil met the specification, however Vertex's lab is not certified under NELAP.

The 2015 annual report filed by Synergy states that 5,153,796 gallons of used oil was marketed as on-specification used oil fuel in 2015, and that no oil was marketed as off specification. This included 151 rail cars shipped on 57 different dates. Two cars were shipped to Synergy Recycling LLC, a sister company located in Kingsland, Georgia (GAR000048009) on September 21, 2015. Rail records obtained from CSX indicate that 43 rail cars of oil were shipped on 22 dates to Vertex Energy, in Louisiana. The company also shipped seven rail cars on three dates to Kingsland, along with other loads shipped by truck. None of the oil shipped to Kingsland was tested prior to shipment. The 2016 annual report submitted by the company on February 27, 2017 said that the company marketed 1,237,923 gallons of used oil as on specification fuel in 2016, and no records related to testing that oil were on site. An additional 4,421,430 gallons were shipped to other out-of-state facilities for further processing.

Rail shipping records to Kingsland had missing or incorrect information on the destination facility, with the consignee identified as Cumberland Transport, a non-notifier. In addition, CSX transferred these cars to a non-notified second rail transporter, First Coast Railroad. This would be allowable for on-specification oil, but not for off-specification oil.

Further, records for shipments by highway used the same form the SRCF used for incoming oil shipments. Therefore, these records all stated that the oil was being shipped to SRCF, not from SRCF. The destination location was only indicated in the billing information section of the form. The oil was sometimes transported by drivers working for SRCF, but occasionally by drivers working for Synergy Recycling LLC. The records did not include the EPA identification number of the transporter(s) involved in the shipment.

**Specific regulations allegedly violated:**

1. 40 CFR 279.56(b) and (c), 40 CFR 279.46(b) - Failure to maintain accurate and complete used oil delivery records

No records were on site related to shipments by rail. This included failure to create a record of used oil transportation to a rail siding in Auburndale, and failure to keep records on site related to over 300 car loads of oil shipped by rail in the past three years. These records are required to be maintained on site by FAC Rule 62-710.510(4). Shipping records for oil shipped to Georgia identified the receiving handler as a non-notifier, rather than Synergy Recycling LLC.

Records of oil shipped from the facility by truck state that the oil was being transported to the facility, with the actual destination identified in the field for the billing address. The company name and EPA ID number of the transporter was not provided on the record, just spaces for the driver's name, signature and date. Some records were dated by the generator after the date the driver was supposed to have accepted the oil.

2. 40 CFR 279.55(b) - Failure to comply with the company's analysis plan.

Failure to conduct specification testing or obtain other information documenting that used oil met the specification prior to shipping used oil as meeting the 40 CFR 279.11 specification in 2015. Used oil was shipped to Synergy's Kingsland facility in 2015 without any analyses, and the annual report filed for 2015 stated that all oil was shipped as on specification oil.

Specification testing was performed by a non-certified lab in violation of the permit for rail cars shipped on at least 77 days to Vertex since a 2015 CAO letter informed the facility of this violation.

The 2016 annual report stated that 1,237,293 gallons of used oil was marketed as on specification fuel in 2016. The facility's analysis plan identified the maximum number of gallons of oil that would be composited into one sample for analysis of a batch of oil as 85,000 gallons. Therefore, the minimum number of batch analyses that should have taken place in 2015 is 60 and 15 analyses in 2016.

40 CFR 279.57 (a)(2)(i) - Failure to keep analytical records

The results of Dextsil kit used oil analyses for the rebuttable presumption on shipments of used oil received at the facility were not recorded in the lab log book.

Copies of the oil analyses conducted by the non-certified lab were not maintained on site.

Peer Review Request

Synergy Recycling of Central Florida, LLC. (FLR000053611)

March 8, 2017

4. FAC Rule 62-710.850(5) - Storage of used oil filters in open containers, not on an impervious surface.

Sixteen 250 gallon bins of used oil filters were staged on a bare dirt surface, without adequate closures. At least two had no lids; others were stacked so that the lid condition could not be determined. This was cited previously in 2015.

5. FAC Rule 62-710.401(6) – Used oil stored in an open, unlabeled container without secondary containment.

An open plastic tub containing a quantity of used oil, water and two oil filters was stored outdoors, without secondary containment. This is also a violation of 40 CFR 279.54(c) and (f) for used oil processors, and is a repeat violation from 2015.

6. FAC Rule 62-710.600(2) Failure to conduct annual training in 2016

Registered used oil transporters are required to conduct an annual training review of Florida's used oil management regulations. Some DOT and OSHA training was documented in 2016, but used oil regulations, oil screening and recordkeeping were not covered. One new driver hired from another company did not have a file documenting his training.

7. 40 CFR 279.52(b)(4) – Failure to amend an outdated contingency plan

Amendments are required after staff changes. The plan was not amended after a Synergy emergency coordinator transferred to Ricky's Oil in Miami. This is a repeat violation.

8. Section 403.161(1)(b) Florida Statutes – Failure to comply with General Condition 39 of the facility permit.

Daily inspections of the facility tank system were not documented and recorded at least once per week. This was cited previously in 2015

9. FAC Rule 62-710.510(1)(d) – Failure to record used oil source codes

Used oil acceptance records as extracted in the company's annual reports all indicate that the source of the oil is automotive, although at least two records of industrial oil were noted. The used oil acceptance records do not include a space for noting the type of oil received.

**Total Penalty Proposal:      \$22,038.50**

The proposed penalty was calculated in accordance with the attached worksheets.

Peer Review Request  
Synergy Recycling of Central Florida, LLC. (FLR000053611)  
March 8, 2017

Due to the number of separate days of violations noted, and the economic benefit derived from failure to conduct required analyses, penalties exceed the \$10,000 limit under the Environmental Litigation Reform Act (ELRA). Economic benefit must be considered, as this inspection was conducted as part of a federally delegated program, under the Resource Conservation and Recovery Act. See 403.121(8), F.S. Program guidance requires the Department to recover economic benefit if it exceeds \$3,000 and the proposed penalty is less than \$30,000.

**Why compliance without enforcement is not an appropriate alternative:**

Many of the violations are repeat violations. The facility was cited in 2011 and in February 2015 for failure to comply with the specification analysis requirements, and these conditions were specifically discussed in the renewed permit issued March 2, 2015. The facility manager has been in the used oil transportation business for over 20 years, and is very familiar with the recordkeeping and training requirements for used oil facilities. His activities as a driver in 2001 resulted in his employer being penalized for used oil violations specifically related to records that he created. Used oil and/or oil filter container management violations were also cited in 2015, 2013, 2012. The facility was cited for having an outdated contingency plan in 2015 and 2012. The company entered into a short form consent order in February 2010 for violations noted during a November 2009 inspection that the current company manager participated in.

cc: Bill Burns, Division of Waste Management, Compliance Assurance  
Glen Perrigan, Division of Waste Management, Compliance Assurance



# PENALTY COMPUTATION WORKSHEET

Violator's Name: Synergy Recycling of Central Florida, LLC

Identify Violator's Facility: 3800 W Lake Hamilton Dr. Winter Haven FLR000053611

Name of Department Staff Responsible for the Penalty Computations: Elizabeth Knauss

Warning Letter #: #WL17-02HW53SWD

Date: 2/28/2017

	Violation Type	Manual Guide	Potential for Harm	Extent of Deviation	Matrix Range	Adjustment	Total
1.	279.56(b)&(c) used oil delivery records not created, inaccurate and/or not on site; delivery by non-notifier	UO 39	Moderate	Major	\$4,599-\$3,200		\$4,599.00
2.	279.55(b) failure to conduct specification testing, failure to comply with the QA rule for testing conducted	UO 164	Moderate	Major	\$4,599-\$3,200	EB=\$2,450.25	\$7,049.25
3.	279.57(a)(2)(i) – analytical records not on site, halogen screening results not recorded	UO 42 UO 161	Moderate	Major	\$4,599-\$3,200		\$3,200.00
4.	62-710.850(5)(a) Sixteen bins of oil filters not closed, not on pavement	UO 130	Minor	Major	\$1,199-\$500	Repeat 2015	\$1,199.00
5.	62-710.401(6) tub with used oil open, outside, not labeled and without containment	UO 103	Minor	Major	\$1,199-\$500	Repeat 2015	\$1,199.00
6.	62-710.600(2) – No annual training in 2016, no documented training for new driver	UO 61	Moderate	Moderate	\$3,199-\$2,000	EB = \$792	\$2,792.00
7.	279.52(b)(4)(iv) – outdated contingency plan	UO 113	Minor	Moderate	\$500	Repeat 2015, 2012	\$500.00
8.	403.161(1)(b) – General Condition 39 inspections not recorded weekly	UO 49	Minor	Minor	\$500	Repeat 2015	\$500.00
9.	62-710.510(1)(d) oil source codes not recorded – automotive by default	UO 38	Minor	Minor	\$500		\$500.00
SUB-TOTAL							\$21,538.25
DEPARTMENT COSTS							\$500.00

Total Penalties Including Department Costs:

\$ 22,038.25

Mary E. Yeargan, P.G.  
Southwest District Director  
Florida Department of Environmental Protection

Date \_\_\_\_\_

**WORKSHEET  
RANKING SYSTEM FOR HARM DETERMINATION**

FACILITY NAME: Synergy Recycling of Central Florida Date: 2/28/2017

EPA ID No.: FLR000053611 Case #: #WL17-02HW53SWD

	Violation	Description	Nature of Waste	Amount of Waste	Release	People	Threats	Total
	279.56(b)	Shipping records	3	8	0	4	2	17
	279.55(b)	Specification testing	3	8	0	4	2	17
	279.57(a)(2)	Analysis Records	3	8	0	4		15
	62-710-850(5)	Oil filter bins	2	8		2		12
	62-710.401(6)	Oil tub	3	1	0	2		6
	62-710.600(2)&(3)	Training	3	8	0	2		13

<b>Harm Ranking Tool</b>	
Nature of Waste	Score
High Hazard (acutely toxic or reactive)	6
Other HW/Universal Waste	4
Used Oil	3
Used Oil Filters	2
<b>Waste Volume</b>	
> 5,000 kg (25 drums) of waste	8
1,000 to 5,000 kg (5 to 25 drums) of waste or > 2.2 lb. of acute HW	5
> 100 to 1,000 kg (5 drums) of waste or > 2.2 lb. acute HW	2
< 100 kg < 25 gal. of waste	1
<b>Discharge</b>	
To Surface Water Body or Off Site	12
To Ground Water	8
To Soil or Air	6
To Impervious Surface or Containment	8
De Minimis / Cleanup per 62-780 completed	6
No Discharge	4
<b>Potential Exposures</b>	
> 1,000 people	4
101 - 1,000 people	3
10 - 100 people	2
< 10 people	1
<b>Additional Threat Factors (select all that apply - use if no discharge observed)</b>	
1. Fire or Explosion Risk	0-4
2. Incompatible Waste Storage	0-4
3. Risk of Employee Exposure above PELs	0-4
4. Container Integrity	0-4
5. Inadequate Provisions for Detecting and Preventing Releases	0-4
<b>Harm Rankings</b>	
SUBSTANTIAL (Major)	Over 20
SIGNIFICANT (Moderate)	13-20
MINIMAL (Minor)	Under 13

PENALTY JUSTIFICATION / DEVIATION WORKSHEET

FACILITY NAME: Synergy Recycling of Central Florida Date: 3/1/17

EPA ID No.: FLR000053611 Case #: #WL17-02HW53SWD

*Use this worksheet to explain all deviations from the program specific guidelines for characterizing violations and for all violations that do not have a specific penalty guideline included within the Enforcement Manual.*

1. Failure to create shipping records, keep copies of records or fill out records accurately

Although it could be argued that this violation occurred on a minimum of 185 separate days for rail car loading in the past 3 years, a multi day penalty is not being sought for this violation, as alternate records were available off site to enable tracking the company's oil to the ultimate destination.

However, due to the number of days of violation, the District recommends assessing these related violations at the top of the matrix cell range.

2. 62-710.401(6), 62-710.850(5) Used Oil and Oil Filter Container Management

These violations were cited in 2015 and resolved through informal enforcement. Because of this, and the number of filter containers involved, the District recommends assessing these violations at the top of the matrix cell range.

Potential for Harm - Minor - Based upon the RCRA Program guidelines for ranking harm from violations based on the nature and quantity of waste involved, releases and the number of people potentially affected

Deviation from the Rule - Major - Based upon program guidelines for failure to comply

## PENALTY JUSTIFICATION / DEVIATION WORKSHEET

FACILITY NAME: Synergy Recycling of Central Florida Date: 3/1/17

EPA ID No.: FLR000053611 Case #: #WL17-02HW53SWD

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Potential for Harm - Minor - Based upon the RCRA Program guidelines for ranking harm from violations based on the nature and quantity of waste involved, releases and the number of people potentially affected

Deviation from the Rule - Major - Based upon program guidelines for failure to comply

## ECONOMIC BENEFIT WORKSHEET

FACILITY NAME: Synergy Recycling of Central Florida Date: 3/1/17

EPA ID No.: FLR000053611 Case #: #WL17-02HW53SWD

Economic Benefit = Avoided Costs (1-C) + Delayed Costs (T)

C = Current Corporate Tax Rate = .34

T = IRS Interest Rate = 3% per year

Violation: Failure to comply with Analysis Plan (no analysis is required unless a specification claim is made)

Avoided Costs: Based on Synergy's tank capacity and analysis plan, the maximum size of one batch of oil that could be tested for the used oil specification oil is 85,000 gallons.

Per the 2015 annual report stating the quantity of oil shipped in 2015 as specification fuel, a minimum of 60 analyses should have occurred.

Per the 2016 annual report stating the quantity of oil shipped in 2016 as specification fuel, a minimum of 15 analyses should have occurred.

Vertex Energy's lab is not certified in accordance with the Department's QA rule, or by Louisiana's Environmental Laboratory Accreditation Program. It is not known whether Vertex billed Synergy for analytical services. One commercial lab quoted a price of \$175.00 per sample for a specification analysis.

Minimum economic benefit was calculated based on the Department's Central Lab costs

\$49.50 Department cost per analysis (4 metals @ \$8.00 each plus \$17.50 flash point)

X 75 samples

\$3,712.50

Delayed Costs = \$0

EB = (\$3,712.50)(1-.34) + (\$0) = \$2,450.25

Violation: Failure to conduct 2016 training in used oil management regulations in Florida

Avoided Costs – Minimum staff, 9 drivers, operations manager, facility manager, office manager = 12

4 hours of class time based on FDEP driver training class @ estimated Avg. \$25.00/hr.

Estimated avoided costs (personnel time) = \$1,200

Delayed Costs = \$0

EB = (\$1,200)(1-.34) + (\$0) = \$792