

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the Pennsylvania Hazardous Waste Management Program), implemented through the Pennsylvania Hazardous Waste Management Regulations (PAHWMR), in lieu of the federal hazardous waste management program authorized under RCRA Subtitle C, 42 U.S.C. §§6921 – 6939 (g). Effective January 30, 1986, the Pennsylvania Hazardous Waste Management Program was authorized by the EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, and the PAHWMR thereby became requirements of RCRA Subtitle C and enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). *See* 51 *Fed. Reg.* 1791 (January 15, 1986), 65 *Fed. Reg.* 57734 (September 26, 2000), 69 *Fed. Reg.* 2674 (January 20, 2004) and 74 *Fed. Reg.* 19453 (April 29, 2009). EPA authorized the PAHWMR that incorporate, with certain exceptions, specific provisions of Title 40 of Code of Federal Regulations by reference that were in effect as of October 12, 2005.
5. EPA has given the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
6. This Consent Agreement and the accompanying Final Order address alleged violations by Respondent of RCRA and the federally-authorized PAHWMR, codified at 25 Pa. Code Chapters 260a – 266a, 266b, and 268a – 270a.
7. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).

GENERAL PROVISIONS

8. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
9. Except as provided in Paragraph 8, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
10. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the Consent Agreement and Final Order.
11. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
12. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.

13. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
15. Respondent is, and at all times relevant to the violations alleged herein was, a corporation of the Commonwealth of Virginia.
16. Respondent is, and at all times relevant to the violations alleged herein was, a "person" as defined that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 25 Pa. Code § 260a.10.
17. Respondent is, and at all times relevant to the violations alleged herein was, the "owner" and "operator" of a "facility," described in Paragraph 18, below, as the terms "owner" and "operator" are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1, and as the term "facility" is defined in 25 Pa. Code § 260a.10.
18. The facility referred to in Paragraph 17, above, including all of its associated equipment and structures, is a facility that provides storage of consumer automotive products in connection with the distribution of such consumer products to certain retail stores operated by Respondent and is located at 9755 Commerce Circle, Kutztown, PA 19530 (the Facility).
19. PADEP assigned the Respondent RCRA Generator ID No. PAR000526616.
20. Respondent was at all times relevant to the violations alleged in this Consent Agreement and the attached Final Order, a "generator" of, and has engaged in the "storage" in "containers" at the Facility of materials described below that are "solid wastes" and "hazardous wastes", as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code § 260a.1, with the exception of the term "storage", which is defined in 25 Pa. Code § 260a.10.
21. By letter dated December 15, 2020, EPA Region III issued Respondent a Request for Information (the IRL), pursuant to Section 3007(a) of RCRA. Respondent's initial response to the IRL was dated February 1, 2021.
22. At all times relevant to the violations alleged in this Consent Agreement and the attached Final Order, Respondent generated, among other hazardous wastes: a) petroleum distillate-based "press wash" and b) waste paint mixed with a hydrocarbon-based solvent (known by the trade name "MRC-K"), each of which is hazardous because each exhibits characteristics of ignitability and meets the criteria for EPA Hazardous Waste No. D001, as set forth at 40 C.F.R. § 261.21, which is incorporated by reference into the PAHWMR at 25 Pa. Code § 261a.1; and b) parts washer fluid which exhibits the characteristic of toxicity and meets the criteria for EPA Hazardous Waste No. D039, as set forth at 40 C.F.R. § 261.24, which is incorporated by reference into the PAHWMR at 25 Pa. Code § 261a.1.

23. During certain periods of time in calendar years 2019 through 2020, the material described in Paragraph 22, above, was in “storage” in containers at the Facility.

Count I

Failure to Qualify for a Permit Exemption or Obtain Interim Status or a Permit

24. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
25. 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b) and (c), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), provide, in pertinent part, that a person may not own or operate a facility for the storage of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.
26. At all times relevant to the violations alleged in this Consent Agreement and Final Order, Respondent did not have: a) a permit for the Facility, pursuant to 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b) and (c) nor b) interim status for the Facility, pursuant to 25 Pa. Code § 265a.1, which incorporates by reference 40 C.F.R. § 265.1(b), and, therefore, was not authorized to store hazardous waste at the Facility in accordance with the regulations set forth at 40 C.F.R. Parts 265 or 270.
27. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.34(a) (Accumulation Time) (2005), which provides in applicable and relevant part: “Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:...

* * *

(4) The generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265, with § 265.16...

28. 40 C.F.R. § 265.16 (Personnel Training) provides in relevant part:
- (a)(1) Facility personnel must 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 this part...

* * *

- (c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section....
- (d) The owner or operator must maintain the following documents and records at the facility:

- (4) Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this section has been given to, and completed

by, facility personnel.

- (e) Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company...

29. 40 C.F.R. § 265.52 (Content of Contingency Plan) provides in relevant part:

- (c) The plan must include a description of arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services pursuant to § 265.37.

- (e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications, and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
- (f) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

- 30. Prior to February 2021, Respondent failed to maintain any records of annual review of the required initial hazardous waste training for: a) one individual during calendar year 2019 b) for one individual during calendar year 2020.
- 31. During, at least, calendar years 2019 and 2020, Respondent failed to maintain records of the annual review of the initial hazardous waste training as required pursuant to 40 C.F.R. § 265.16(d)(4).
- 32. Subsequent to December 15, 2020, and in response to the IRL, Respondent submitted information to EPA relating to preparedness, prevention and contingency procedures at the Facility, including the Facility's Preparedness, Prevention and Contingency Plan (the Facility's Contingency Plan).
- 33. During calendar years 2019 and 2020, the Facility's Contingency Plan did not include the following information: a) description of arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services; b) a list of all emergency equipment at the Facility or c) an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary, including a description of the signal(s) to be used to begin

evacuation and the evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

34. Based on the facts described in Paragraph 33, above, during, at least, calendar years 2019 and 2020, the Facility's Contingency Plan did not include all information required pursuant to 40 C.F.R. § 265.52.
35. During calendar years 2019 and 2020, the Facility failed to meet the conditions to the exemption for a large quantity generator that accumulates hazardous waste of 25 Pa. Code § 262a.10 which incorporates by reference 40 C.F.R. § 262.34(a) with exceptions not relevant herein, on account of the Facility's failure to maintain records of the required annual review of the hazardous waste training for two employees in accordance with 40 C.F.R. § 265.16(d); and the Facility's failure to include certain required content described above in the Facility's Contingency Plan as required by 40 C.F.R. § 265.52.
36. Based on the facts set forth in Paragraph 35, above, during calendar years 2019 and 2020, Respondent was required by 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to submit an application for a permit for the hazardous waste storage activities described in this count and failed to submit such application.
37. In failing to comply with 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count II

Failure to Maintain Training Documentation

38. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
39. PAHWMR at 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.16, which provides in relevant part:
 - (d) The owner or operator must maintain the following documents and records at the facility:
* * *
 - (4) Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this section has been given to, and completed by, facility personnel.
 - (e) Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company...
40. Respondent failed to maintain any records of annual review of the required initial

hazardous waste training for: a) one current personnel during calendar year 2019 and b) one current personnel during 2018 and 2020.

41. Based on the facts described in Paragraph 40, above, during, at least, calendar years 2019 and 2020, Respondent failed to comply with the requirements set forth at 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d).
42. In failing to comply with the requirements set forth in the PAHWMR at 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

Count III
Failure to Maintain a Complete Contingency Plan

43. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
44. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.52(c)-(f), which provides in relevant part:

§ 264.52 Content of contingency plan

* * * *

- (c) The plan must include a description of arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services pursuant to § 264.37.

- (e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
- (f) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

45. Prior to February 2021, Respondent failed to include in the Facility's Contingency Plan the following content: a) description of arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services or b) a list of all emergency equipment at the Facility or c) an evacuation plan for facility personnel where there is a possibility that evacuation could be

necessary, including a description of the signal(s) to be used to begin evacuation and the evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

46. During calendar years 2019 and 2020, Respondent failed to include the content as described in Paragraph 45, above, in the Facility's Contingency Plan, as required pursuant to PAHWMR, 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.52(c), (e) and (f).
47. In failing to comply with the requirements set forth at 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.52(c), (e) and (f), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

Count IV

Failure to Submit a Biennial Report for 2019 by March 1, 2020

48. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
49. 25 Pa. Code § 262a.10 incorporates by reference 40 CFR § 262.41(a) (Biennial Report), which provides in relevant part: "A generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a single copy of a Biennial Report to the Regional Administrator by March 1 of each even numbered year..."
50. During calendar year 2019, Respondent shipped hazardous waste off site to a treatment, storage or disposal facility within the United States.
51. Respondent failed to submit a Biennial Report, as required pursuant to 25 Pa. Code § 262a.10 and 40 CFR § 262.41(a), for calendar year 2019 on or before the deadline of March 1, 2020.
52. In failing to comply with the requirements set forth at 25 Pa. Code § 26a.10, which incorporates by reference 40 C.F.R. § 262.41(a), Respondent is subject to the assessment of penalties under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

CIVIL PENALTY

53. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Fifteen Thousand DOLLARS (\$15,000)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
54. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria (statutory factors) set forth in in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts

and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 (RCRA Penalty Policy) which reflects the statutory penalty criteria and factors set forth at Sections 3008(a)(3) of RCRA, 42 U.S.C. §§ 6982(a)(3), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

55. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2023-0039;
- b. All checks shall be made payable to the "United States Treasury";
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see: <https://www.epa.gov/financial/makepayment>.
- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously via email to:

Manuel Ronquillo, Esq.
Chief, Water and Waste Enforcement Branch
Office of Regional Counsel (3RC40)
U.S. EPA, Region III
ronquillo.manuel@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

56. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

57. Payment of the civil penalty is due and payable immediately upon receipt by Respondent

of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

58. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
59. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received within 30 calendar days of the Effective Date of this Consent Agreement and Final Order, EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
60. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
61. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
62. The parties consent to service of this Consent Agreement and Final Order by e-mail at the following valid e-mail addresses: ronquillo.manuel@epa.gov (for Complainant), and mwiegard@gentrylocke.com (for Respondent).

GENERAL SETTLEMENT CONDITIONS

63. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
64. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of