

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 North 5th Street

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
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)
Lambeth Salvage Yard)
Danny G. Lambeth,)
)
)
Mark Lambeth, and)
)
)
)
Joel Lambeth)
(d/b/a Truck Wholesale))
22640 Pleasant Valley Rd., Wellsville, Kansas,)
)
)
Kansas Department of Transportation)
Eisenhower State Office Building)
700 SW Harrison, 14th Floor)
Topeka, Kansas 66603-3745,)
)
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Respondents)
)
)
)
Proceedings under Section 7003 of the)
Resource Conservation and Recovery)
Act as amended, 42 U.S.C. § 6973)
and)
Section 309(a) of the Clean Water Act,)
33 U.S.C. § 1319(a))

Docket No. RCRA-07-2010-0001
CWA-07-2010-0002

UNILATERAL ADMINISTRATIVE
ORDER

I. JURISDICTION AND PRELIMINARY STATEMENT

1. This Unilateral Administrative Order (Order) is issued to the Kansas Department of Transportation, a Department within the government of the State of Kansas (KDOT or Respondent KDOT), and to Danny G. Lambeth, Mark Lambeth, and Joel Lambeth, (hereinafter the "Lambeth Respondents"), doing business as Truck Wholesale, 22640 Pleasant Valley Road, Wellsville, Kansas. This Order is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 7003(a) of the Solid

Waste Disposal Act of 1976, commonly referred to as the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (RCRA), 42 U.S.C. § 6973(a). The authorities vested in the Administrator pursuant to RCRA have been further delegated to the EPA Regional Administrators and further to the Director of the Air, RCRA, and Toxics Division.

2. This Order is also issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (EPA) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

II. STATEMENT OF PURPOSE

3. This Order concerns certain property located at 22640 Pleasant Valley Rd., Wellsville, Miami County, Kansas, owned and formerly operated as "Truck Wholesale" by the Lambeth Respondents, and recently the site of abatement activities, including truck demolition and salvage operations, by Respondent KDOT. The Order requires Respondents to (i) immediately develop and implement a plan describing best management practices Respondents will use to prevent further discharges of oil and other pollutants from the facility to Rock Creek; (ii) identify all solid and hazardous wastes currently being generated at the facility; (iii) restrict access to areas where oil, solid and hazardous wastes have been disposed at the facility; (iv) obtain a National Pollutant Discharge Elimination System (NPDES) permit pursuant to the Clean Water Act from the State of Kansas; (v) develop a Site Characterization Plan to determine where hazardous wastes have been disposed at the facility; including an investigation to determine the

extent of off-site migration of waste; and (vi) clean-up of the property and any contaminated surrounding areas as necessary.

III. PARTIES BOUND

4. This Order applies to and is binding upon the Lambeth Respondents and their heirs, successors and assigns. With respect to Respondent KDOT, this Order applies to and is binding upon KDOT and any successor department or agency. Any change in ownership, corporate status or governmental organizational status of Respondents including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this Order.

5. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

IV. FINDINGS OF FACT

6. One or more of the Lambeth Respondents have been doing business as "Truck Wholesale" at 22640 Pleasant Valley Rd., Wellsville, Miami County, Kansas (hereinafter "the facility" or the "Truck Wholesale facility"), for approximately 30 years. The facility is a truck sales and salvage operation on approximately 20 acres of land near Interstate highway 35 in northern Miami County. The legal description of the facility is Attachment 1 to this Order.

7. Lambeth Respondents Mark Lambeth and Joel Lambeth are part owners of the real property comprising the Truck Wholesale facility and are operators of the facility. Lambeth

Respondent Danny Lambeth has operated the facility for over 30 years. Respondent KDOT is currently operating the facility.

8. On September 10, 2001, Respondent KDOT revoked Truck Wholesale's Salvage Certificate of Compliance after providing two notices to Truck Wholesale that it was in violation of the Kansas Junkyard and Salvage Control Act, K.S.A. 66-2201, *et seq.*

9. On November 5, 2002, after the Lambeth Respondents appealed the revocation of Truck Wholesale's Certificate of Compliance, KDOT issued a Final Order upholding the revocation. The Final Order became effective on December 9, 2002.

10. On June 3, 2003, the District Court of Shawnee County, Kansas issued an opinion (Case No. 03-C-27, unpublished) affirming KDOT's Final Order revoking Truck Wholesale's Certificate of Compliance.

11. On June 29th, 2004, the District Court of Miami County, Kansas issued an abatement order requiring the Lambeth Respondents to abate the illegal junkyard within thirty days of the order, and also authorizing KDOT the legal right to enter the Truck Wholesale facility property to "effectuate the abatement at Defendants' expense." (Case No. 03-C-169, unpublished, p. 6.)

12. On June 21, 2007, the Supreme Court of Kansas denied the Lambeth Respondents' petition for review of the decision of the abatement order issued by the District Court of Miami County.

13. In January, 2009, KDOT entered the property, and through its contractor, Gibsons Recycling, began dismantling and removing vehicles, parts and other materials from the facility.

14. On or about March 10, 2009, the phone duty officer for the EPA received a telephone report from Mr. Mark Lambeth regarding the discharge of oil, fuel and antifreeze from the Truck Wholesale facility due to KDOT activities.

15. An EPA representative visited the facility the afternoon of March 10, 2009. At the time of that visit, recent heavy rains and movement of heavy equipment at the facility had created deep ruts that were filled with rain water. Many of these puddles had an oily sheen on the surface. In addition, there were several areas where truck fuel tanks were breached by an excavator, and diesel fuel was released from the tanks. The EPA estimated that the fuel spills ranged from approximately a few ounces to several gallons. Other releases of crankcase oil and hydraulic oil were also present. Some of the oil-stormwater mixture was discharging off-site into a ditch adjacent to Highway I-35.

16. At the time of the March 10, 2009 facility visit, EPA observed runoff with an oil sheen flowing south along the highway ditch, and into Rock Creek, a perennial stream approximately 100 yards from the facility. Rock Creek eventually discharges into Hillsdale Lake, which is a source of drinking water for Miami County Rural Water District #2.

17. Also present at the time of the March 10, 2009 visit was a representative from the Kansas Department of Health and Environment (KDHE). The EPA representative and the KDHE representative both directed KDOT to take measures to prevent the runoff of oil and other materials from the facility, to contain and remove spilled material, and remove contaminated soils as directed by KDHE.

18. On March 11, 2009, another EPA representative visited the facility and again discussed with KDOT's contractor measures that could be taken to prevent runoff/discharges of oil and other contaminated material from the facility.

19. On June 3, 2009, an EPA representative visited the facility again after receiving a call from Mr. Mark Lambeth, who stated that spills of oil and other material were still occurring at the facility. At that time, there were numerous spills of fuel and oil evident, including areas of pooled oil, which had not been cleaned up or contained.

20. In a letter dated June 4, 2009, KDHE informed Mr. Mark Lambeth and KDOT that the measures that had been employed to prevent the discharge of contamination were inadequate, and directed both Respondents to immediately: pump and containerize all pooled liquids; excavate and containerize visibly contaminated soil; properly dispose of containerized liquids and soil; and ensure that further crushing/dismantling activities were carried out in a manner that would prevent further discharges.

21. On July 24, 2009, an EPA representative visited the facility after again receiving a telephone call from Mr. Mark Lambeth. At that time, some areas of the facility were littered with broken vehicle batteries, there were several areas of pooled oil and other liquids as well as visibly contaminated soil, one of the totes used to store recovered fuel was leaking and had created a large area of visibly contaminated soil, and the containment structures that had been installed to prevent runoff to the creek were visibly stained with oil all the way to the top of the

structures, indicating that the capacities of the structures were insufficient to contain stormwater runoff at the facility and had overflowed.

22. On September 22, 2009, EPA representatives again visited the facility. There had been recent rainfall, and runoff from the facility was discharging to various ditches at the facility which flowed into Rock Creek, and also directly into Rock Creek. Oily sheens were visible on virtually all puddles at the facility. Scrap metal, tires, wheels, vehicle parts, radiators, used oil filters, used fuel filters, and dismantled batteries were littered about the facility on the bare soil or in the drainage ditches that flowed to Rock Creek.

23. Used motor oil usually contains metals such as cadmium, chromium, and lead, as well as small amounts of gasoline or diesel, antifreeze and polycyclic aromatic hydrocarbons (PAHs), which come from the burning of gasoline or diesel in the engine of a vehicle. Benzene, toluene, ethylbenzene and xylene are known human carcinogens and are found in vehicle fuels. Mercury is commonly found in various thermostats and switches in motor vehicles. Lead is used in motor vehicle batteries and as weights to balance wheels.

24. The hazardous wastes or hazardous constituents identified herein may have the following effects on human health or the environment:

A. CHROMIUM is a metal and, when a waste contains more than 5 parts per million chromium as analyzed using the Toxic Characteristic Leachate Procedure (TCLP), is a D007 characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261. Human exposure occurs through inhalation, ingestion, and dermal absorption. The lungs, kidneys, liver, and skin, and the immune system may also be affected. Long-term exposure to chromium may cause lung cancer.

B. LEAD is a metal and, when a waste contains more than 5 parts per million as analyzed using the TCLP, is a D008 characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261. Humans may be exposed to lead through ingestion of contaminated water or soils or by inhalation of lead particles in the air. Lead has many toxic effects on human health and is classified by EPA as a probable human carcinogen. A significant amount of lead that enters the body is stored in the bone for many years and can be considered an irreversible health effect. Children are especially vulnerable to the effects of lead exposure.

C. ARSENIC is a metal, and when a waste contains more than 5 parts per million as analyzed using the TCLP, is a D004 characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261. The EPA has determined that inorganic arsenic is a human carcinogen. Lower doses of ingested inorganic arsenic may cause irritation of the stomach and intestines, with symptoms such as stomach ache, nausea, vomiting, and diarrhea. Children may be more susceptible to health effects from inorganic arsenic than adults.

D. CADMIUM is a metal, and when a waste contains more than 1 part per million as analyzed using the TCLP, is a D006 characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261. Cadmium can enter the body through ingestion and inhalation. Most of the cadmium that enters the body goes to the kidney and liver and can remain there for many years.

E. MERCURY is a metal, and when a waste contains more than 1 part per million as analyzed using the TCLP, is a D009 characteristic hazardous waste. It is also a hazardous constituent listed in Appendix VIII to 40 C.F.R. Part 261. Mercury is found in automotive brake system actuator switches, temperature gauges, trunk and hood light switches, automotive batteries, and other automotive components. Mercury can enter the body through ingestion, dermal contact and inhalation. The human nervous system is very sensitive to all forms of mercury. The EPA has determined that methyl mercury and mercuric chloride are possible human carcinogens. Methyl mercury is produced by the breakdown of mercury in water or soil by microscopic organisms.

F. BENZENE, which is one of the BTEX compounds, is a colorless liquid with a sweet odor. When wastes exceed more than 0.5 parts per million as analyzed using the TCLP, it is a D018 characteristic hazardous waste. It evaporates into the air very quickly and dissolves slightly in water. Benzene is a natural part of crude oil, gasoline and diesel. Benzene is a known human carcinogen. Benzene can pass through the soil and water into the air. It breaks down more slowly in soil, and can pass through the soil into the groundwater.

G. POLYAROMATIC HYDROCARBONS (PAHs) are a group of over 100 different chemicals that are formed during a manufacturing process or the incomplete burning of coal, oil and gas, garbage, or other organic substances. PAHs can enter the body through dermal contact,

ingestion and inhalation. Some PAHs can readily evaporate into the air from soil or surface waters. Most PAHs do not dissolve easily in water. They stick to solid particles and settle to the bottoms of lakes or rivers. In soils, PAHs are most likely to stick tightly to particles and certain PAHs move through the soil to contaminate groundwater. The Department of Health and Human Services has determined that some PAHs may reasonably be expected to be carcinogens.

25. Exposure to the hazardous constituents outlined above through dermal contact, ingestion or inhalation present health risks to people who come into contact to these materials. Such persons may include the property owners, KDOT personnel, contractors, emergency responders, state, local and federal regulators, and trespassers. Potential exposure might also occur to people or wildlife ingesting or coming into contact with water or sediments in Rock Creek. The abatement actions required by the Order are necessary to remove the endangerment posed by current facility conditions.

26. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

27. None of the Respondents has a General Permit, and none have ever submitted a Notice of Intent (NOI) to apply for a permit.

28. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA, requires, in part, that a discharge of stormwater associated with an industrial activity must

conform to the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

29. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

30. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activities to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

31. KDHE is the state agency with authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

32. Respondents are “persons” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and also as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

33. The operation of a truck salvaging business constitutes “industrial activity” within the meaning of 40 C.F.R. § 122.26(b)(14)(vi). The grading, excavating and other activities at the facility constitute “construction activity” within the meaning of 40 C.F.R. § 122.26(b)(14)(x) and have caused “discharges of stormwater associated with industrial activity” within the meaning of 40 C.F.R. § 122.26(a)(1)(ii).

34. The solid wastes, hazardous wastes and hazardous waste constituents discharged from the facility are “pollutants” from a “point source” and were being discharged into Rock

Creek, which is a “water of the United States” within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

35. Respondents’ continued discharge of pollutants associated with industrial activity into a water of the United States without a obtaining a NPDES permit is a violation of Sections 301(a) and 402(p) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342(p) and implementing regulations.

36. The property located at 22640 Pleasant Valley Rd., Wellsville, Miami County, Kansas, is a “facility,” and, at all times relevant to this action, Lambeth Respondents Mark Lambeth, Joel Lambeth and Shell Ann Plekowski were the “owners” of the facility, and Respondents KDOT, Mark Lambeth and Danny Lambeth are or have been “operators” of the facility within the meaning of 40 C.F.R. § 260.10, as incorporated by reference in the Kansas Hazardous Waste Regulations at K.A.R. 28-31-1(a)(2).

37. The wastes stored and handled at Respondent’s facility are “solid wastes” and/or “hazardous wastes,” as defined in Sections 1004(27) of RCRA, 42 U.S.C. § 6903(27), and 1004(5) of RCRA, 42 U.S.C. § 6903(5), respectively.

38. The presence of solid wastes, hazardous wastes, and/or hazardous constituents in the soil at the facility resulted from the past or present handling, storage, treatment, transportation, and/or disposal of solid wastes, hazardous wastes, and/or hazardous constituents.

39. Present conditions at the facility may constitute an imminent and substantial endangerment to health or the environment, within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

40. Respondents have both been contributing to such handling, storage, treatment, transportation and/or disposal of solid wastes, hazardous wastes and/or hazardous constituents at the facility within the meaning of RCRA and its implementing regulations.

VI. NOTICE TO STATE AND LOCAL AUTHORITIES

41. The State of Kansas and appropriate local authorities have been notified of the issuance of this Order pursuant to Section 7003(c) of RCRA.

VII. ORDER

42. Based on the foregoing, Respondents are hereby ordered to perform the activities described in Section VIII of this Order and all other activities required by this Order.

VIII. WORK TO BE PERFORMED

43. Immediate Compliance with RCRA/Restriction of Access: Within five (5) days of the effective date of this Order, Respondents shall provide a certification to EPA, wherein Respondents describe how all of its waste storage and management activities are being conducted in compliance with the applicable provisions of RCRA and its implementing regulations. Respondents shall not resume any waste handling or excavation, grading or other salvage activities until EPA has reviewed and approved the certification required herein. Also within five (5) days of the effective date of this Order, Respondents shall restrict access by the

public to areas of the property where there has been a release of solid and/or hazardous waste. Measures to accomplish this may include, but are not limited to, posting “no trespassing” signs or signs directing visitors to the facility away from areas where solid or hazardous waste contamination may be present, installing gates to be closed after business hours to restrict access to the facility by the public, or other similar measures. Respondents shall provide a written description, photographs, or other documentation of the measures taken to comply with this Paragraph within seven (7) days of completion of such measures to EPA’s representative identified in Paragraph 51 below.

44. Posting: Respondents shall immediately post a sign at the facility which provides notice of the hazardous conditions present at the facility in accordance with the requirements of Section 7003(c) of RCRA, 42 U.S.C. § 6973(c). The sign to be posted shall be at least twenty-four (24) by thirty-six (36) inches, and shall be made of weatherproof material in white or a brightly-colored background with large, clearly contrasting lettering. The sign shall be posted in a prominent place at or near the public entrance to the facility, and shall state: “Warning: Conditions at this facility may present an imminent and substantial endangerment to human health or the environment.” Failure to post the sign as directed in this Paragraph will constitute a violation of this Order.

45. Notice of Intent to Comply: Within five (5) days of the effective date of this Order, Respondents shall each notify EPA of their intent to comply with this Order in accordance with Section XIII. (Notice of Intent to Comply) below.

46. Respondents shall take corrective actions to eliminate and prevent recurrence of the violation cited above, and to come into compliance with the Clean Water Act, including, but not limited to, the following items:

- a. Within seven (7) days of the effective date of this Order, submit a complete notice of intent (NOI) to be covered by a general stormwater permit to KDHE, with a copy to EPA;
- b. Fully comply with all terms of any stormwater permit issued to Respondent by KDHE;
- c. Submit to EPA a copy of any Stormwater Pollution Prevention Plan prepared by Respondents pursuant to the terms of any stormwater permit issued to Respondent by KDHE, within ten days of when Respondent's permit requires the Plan to be developed;
- d. Within ten days of the effective date of this Order, develop and implement an Interim Measures Plan describing Best Management Practices that Respondents shall immediately implement to minimize the discharge of pollutants due to stormwater runoff from the facility. The plan shall be developed in accordance with EPA guidance manual "Developing Your Stormwater Pollution Prevention Plan: A Guide for Construction Sites" (EPA #833-R-060-04) and "Stormwater Management for Industrial Activities" (EPA 832_R-92006, 9/92). Respondent shall submit a copy of the Interim Measures Plan to EPA within twenty (20) days of the effective date of this Order. If EPA identifies deficiencies in the Interim Measures Plan, EPA will provide written comments on the Plan to Respondent, identifying any revisions to the Plan that are necessary in order to minimize the discharge of pollutants due to stormwater runoff.

Respondent shall revise the Plan in accordance with EPA's comments and implement the revised Plan.

47. Selection of contractor: Within seven (7) days of the effective date of this Order, Respondents shall select a contractor, subject to EPA approval, to carry out all activities set forth herein. EPA retains the right to disapprove of the selected contractors and/or subcontractors retained by the Respondents.

a. Respondents shall also notify EPA of the name and qualifications of their selected Project Manager within seven (7) days of the effective date of this Order. All work performed pursuant to this Section (Work to be Performed) shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste clean-up. Respondents' Project Manager shall be responsible for administration of all of the Respondents' actions required by the Order. To the greatest extent possible, Respondents' Project Manager shall be readily available during all work to be performed hereunder.

b. Respondents shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Section (Work to be Performed) at least seven (7) days prior to commencement of such work. If EPA disapproves of a selected Project Manager or contractor, Respondents shall retain a different Project Manager or contractor within five (5) business days following EPA's disapproval and shall notify EPA of the new Project Manager's or contractor's name and qualifications within seven (7) business days of EPA's disapproval. If EPA still disapproves of the selected contractor or Respondents fail to

select a new contractor, Respondents' failure to select a contractor shall be deemed a violation of this Order.

48. **Hazardous Waste Determinations:** Within fourteen (14) days of the effective date of this Order, Respondents shall perform hazardous waste determinations in accordance with 40 C.F.R. § 262.11, as incorporated by reference at K.A.R. 28-31-1(a)(4), on all solid wastes generated at or disposed at the facility, and shall submit to EPA's Project Manager, identified in Paragraph 51 below, documentation of such determinations. If such determinations have already been performed, Respondents shall submit the determinations to EPA's Project Manager.

49. **Containment of Battery Debris:** Within two (2) days of the effective date of this Order, Respondents shall collect all automotive batteries, battery debris, including casings, cables, battery plates, posts and other battery components, which are scattered on the ground or in piles at the facility and shall containerize such debris in accordance with RCRA. Within seven (7) days of the effective date of this Order, Respondents shall provide EPA's Project Manager identified in Paragraph 51 below with documentation (such as photographs) that the battery debris has been contained in accordance with this Paragraph.

50. **Site Characterization:** Within thirty (30) days of the effective date of this Order, Respondents shall submit to EPA's Project Manager identified in Paragraph 51 below, a Site Characterization Work Plan for the investigation of contamination of the areas where truck dismantling/salvage activities occurred. The Site Characterization Work Plan shall include a Field Sampling Plan, Quality Assurance Project Plan (QAPP), and Health and Safety Plan (HASP) to assess on-site contamination, and any off-site migration of waste, including

neighboring property, drainage pathways adjacent to the facility, and water and sediments in Rock Creek. The QAPP must conform to "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations" (EPA QA/R5. EPA/240/B-01/003 (March, 2001)) and "Guidance for Quality Assurance Plans" (EPA QA/G5. EPA/240/R-02/009 (December, 2002)). The Site Characterization Work Plan shall include a schedule for completion of activities. EPA shall review and approve, disapprove or require modification of the plan as set forth in Paragraph 51 below. Respondents shall carry out all activities required pursuant to the EPA-approved plan in accordance with the schedules contained therein. Failure to timely complete activities shall be a violation of this Order. Within fourteen (14) days of Respondents' completion of the field work, Respondents shall provide a Site Characterization Final Report to EPA's Project Manager identified in Paragraph 51 below.

51. All plans submitted pursuant to this section of this Order shall be reviewed in accordance with the procedures outlined in this Paragraph. The EPA will review the plan and may approve the plan, approve the plan with modifications, or disapprove the plan and provide comments to Respondent. If the plan is disapproved with comments, Respondent shall incorporate EPA's comments and resubmit the plan within fourteen (14) days of receipt of EPA's comments. If Respondent fails to revise the plan in accordance with EPA's comments, then EPA may unilaterally modify the work plan or report and Respondent shall implement such work plan or report as necessary to complete the work pursuant to this Order. If the plan is approved either upon initial submission or resubmission, Respondent shall commence implementation of the plan immediately upon receipt of EPA's written approval of the plan. Upon approval of the plan by

EPA, the plan, including all activities and schedules for such activities, shall be incorporated into and made an enforceable part of this Order, and failure to implement any plan in accordance with the scheduled contained therein shall be deemed a violation of this Order. The EPA representative to whom all plans must be submitted is:

Jim Aycock
Environmental Scientist
ARTD/RESP
U.S. EPA Region 7
901 N. 5th St.
Kansas City, Kansas 66101.

52. EPA may determine that certain additional tasks are necessary to achieve the purpose of this Order, including but not limited to: investigatory work, excavation and disposal of contaminated materials or other activities as necessary to protect human health or the environment. In the event such a determination is made, EPA will notify Respondents in writing that Respondents must perform the additional work and will specify the basis and reasons for its determination that the additional work is necessary. Within seven (7) days of the receipt of such request, Respondents may request a meeting with EPA to discuss the additional work. Within thirty (30) days of notification of the need for additional work, or according to an alternative schedule agreed to by the parties, Respondents shall submit a work plan for such additional work to EPA, which shall include a schedule for implementation of the plan. The plan will be reviewed by EPA in accordance with the procedures set forth herein. Upon approval by EPA, Respondents shall perform the additional work according to the EPA-approved plan. The EPA-approved plan shall be incorporated into and become an enforceable part of this Order. All

additional work performed by Respondents under this subparagraph shall be performed in a manner consistent with this Order.

53. **Split samples**: Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing work under this Order. Respondents shall notify EPA not less than thirty (30) calendar days in advance of any sample collection activity. In addition, EPA shall have the right to take any additional samples that it deems necessary.

54. **Completion Report**: The Respondents shall submit a final Completion Report that details all activities conducted at the facility in conjunction with the Order within forty-five (45) days after completion of all activities. The report shall include, but is not limited to, the following:

- A description of the actions that have been taken to comply with each element of the Order;
- Copies of all results of chemical or physical analyses conducted during this action, including waste profiles, the results of field screening or other on-site or off-site analyses, and analyses of all samples;
- Copies of all hazardous waste manifests or other appropriate shipping papers (i.e., Land Disposal Restriction Notifications) that describe origin and destination, dates, amount, and the description of the materials being transported off-site;
- Copies of certificates of disposal from the selected disposal facilities; and
- Written certification that all solid and hazardous waste leaks and spills have been cleaned up, that Respondents have sent an NOI to the KDHE to obtain a NPDES permit, and that Best Management Practices have been implemented in accordance with the requirements of this Order. The certification statement shall be signed by a responsible official and shall contain the following language:

I certify under penalty of law that the information contained in or accompanying this document is true, accurate, and complete.

As to the identified portions of this document for which I cannot personally verify the accuracy, I certify that based on my inquiry of the person or persons directly responsible for gathering the information, the information is true, accurate, and complete.

-A “responsible official” for purposes of this provision means any person who performs policy or decision-making functions for the KDOT in connection with activities at the Truck Wholesale facility and/or Truck Wholesale business entity.

IX. RECORD RETENTION

55. Until ten (10) years after Respondents’ receipt of EPA’s notification pursuant to Section XVIII (Modification and Termination) of this Order, Respondents shall preserve and retain all non-identical copies of records and documents (including those in electronic form) which relate in any manner to the performance of the work required under this Order. Respondents shall also instruct their contractors and agents to preserve all such documents for a period of ten (10) years.

X. OPPORTUNITY TO CONFER

56. Respondents may, within three (3) days after the effective date of this Order, request a conference with EPA to discuss this Order. The conference must be scheduled to occur on or before October 16, 2009.

57. The purpose and scope of the conference shall be limited to issues involving the implementation of the work required by this Order and the extent to which Respondents intend to comply with this Order. This conference shall not constitute an evidentiary hearing, and shall not constitute a proceeding to challenge this Order. Any such conference shall not give either Respondent a right to seek review of this Order, or to seek resolution of potential liability, and

no official stenographic record of the conference shall be made. Respondents may appear in person or by an attorney or other representative, at any conference held pursuant to Respondents' request hereunder. A request for a conference with EPA does not in any way delay or continue any of the deadlines or work to be performed by the Respondents.

58. Requests for a conference shall be made by telephone followed by written confirmation mailed by the following business day to the EPA contact identified in Paragraph 51.

XI. COMPLIANCE WITH OTHER LAWS

59. Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws.

XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

60. In the event of any action or occurrence during performance of the work which causes or threatens a release of solid or hazardous waste or discharge of pollutants from the facility that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Order, including but not limited to, any plans submitted pursuant to this Order, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the EPA representative identified in Paragraph 51 above, or, in the event of his unavailability, notify the Regional Spill Line number listed in Paragraph 61 below.

61. In addition, in the event of any release of a hazardous substance from the facility, Respondent shall immediately notify the EPA Regional Spill Line at (913) 281-0991 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9602(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIII. NOTICE OF INTENT TO COMPLY

62. Each Respondent shall provide, within five (5) days after the effective date of this Order, written notice to EPA stating whether each Respondent will comply with the terms of this Order. The notice shall be sent to EPA's representative identified in Paragraph 51 above. If either Respondent does not unequivocally commit to perform the work required by this Order, that Respondent shall be deemed to have violated this Order and to have failed or refused to comply with this Order. The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of any Respondent's assertions.

XIV. ENFORCEMENT AND RESERVATIONS

63. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional actions as EPA may deem necessary, or from requiring Respondent in the future to perform

additional activities pursuant to RCRA, the Clean Water Act, or any other applicable law. Such additional enforcement actions may include, but are not necessarily limited to: actions taken pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to assess civil penalties and/or seek injunctive relief; actions taken pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), to compel corrective action at the facility; further actions under Section 7003 of RCRA to address conditions that may present an imminent and substantial endangerment to human health or the environment caused by any future releases of solid waste or hazardous waste from the facility; or actions taken to assess civil penalties for violations of the Clean Water Act. In addition, Respondents shall be subject to civil penalties of up to \$6,500 per day for any violation of this Order under Section 7003(b) of RCRA, 42 U.S.C. § 6973, and civil penalties pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

64. Notwithstanding any provision of this Order, the United States hereby reserves all of its information gathering, inspection and all enforcement authorities and rights under RCRA, the CWA, and any other applicable statutes or regulations. The United States expressly reserves all rights it has to issue additional orders or to take other action it deems necessary or appropriate to address any other areas of the facility which the United States deems a threat to human health or the environment.

65. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand at law or in equity against any person for any liability arising out of or relating in any way to the facility.

66. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by said court order.

67. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the facility. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to RCRA, the Clean Water Act, or any other applicable law. The EPA reserves, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Order;
- b. criminal liability; and
- c. liability arising from the past, present, or future disposal, release or threat of release of solid or hazardous waste or the discharge of pollutants from the facility; and

XV. SAMPLING AND ACCESS

68. EPA and/or its authorized representatives shall have access to the facility at all reasonable times for the purpose of reviewing the progress of Respondents in carrying out the provisions of this Order and for purposes including, but not limited to, inspecting and copying records, collecting samples, and verifying data. Nothing in this Order shall restrict EPA's rights under Section 3007 of RCRA, 42 U.S.C. § 6927, or other statutory authority.

XVI. EFFECTIVE DATE AND COMPUTATION OF TIME

69. This Order shall become effective immediately upon signature. All times for performance of ordered activities shall be calculated from this effective date.

XVII. ADMINISTRATIVE RECORD

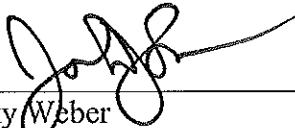
70. The EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of 8:30 a.m. and 4:00 p.m. at the offices of EPA Region 7, located at 901 N. 5th St., Kansas City, Kansas, 66101. To review the Administrative Record, please contact EPA's representative identified in Paragraph 51 above.

XVIII. MODIFICATION AND TERMINATION

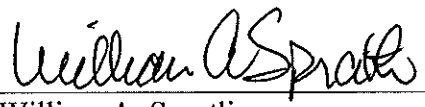
71. EPA may modify or revoke this Order based upon information discovered during the course of implementation of the Order. Any modification shall be incorporated into a revised Order and issued to the Respondents in the form of a modified Unilateral Administrative Order. The provisions of this Order shall remain in full force and effect until all actions required by this Order have been completed and EPA has notified the Respondents, in writing, that the

actions required by this Order have been completed. Respondents shall notify EPA in writing at such time as it believes that all such actions have been completed. The EPA shall have sole discretion in determining whether or not all such actions have in fact been completed. Failure to complete all activities required hereunder as directed by EPA shall be deemed a violation of this Order. The EPA's provision of written notice to Respondents pursuant to this Paragraph shall not be construed as a waiver of any of EPA's rights to take further enforcement action under RCRA or any other laws.

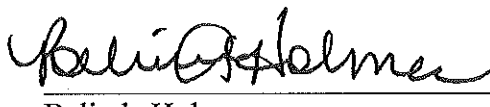
IT IS SO ORDERED:

 10/11/09

Becky Weber
Director
Air, and Waste Management Division
U.S. Environmental Protection Agency
Region 7

 10/11/09

William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7

 10/11/09

Belinda Holmes
Senior Counsel
U.S. Environmental Protection Agency
Region 7

ATTACHMENT 1

Legal Description of Truck Wholesale property

All of that part of the following described tract of ground lying north of I-35 and containing 20 acres more or less in Miami County, Kansas. Beginning at the northeast corner of the southwest quarter of section twenty-six (26), Township fifteen (15), Range twenty-one (21), running thence south 100 rods, being in range with a certain hedge fence on said quarter, thence west along said hedge fence 137 rods, thence north to center of Rock Creek thence in a northerly direction along the center of said Creek to the north line of said quarter section, thence east to place of beginning.