

**In the Matter of:**

GBW Railcar Services, LLC,

**Respondent**

**Docket No. RCRA-07-2018-0244**

**CONSENT AGREEMENT AND FINAL ORDER**

**PRELIMINARY STATEMENT**

The U.S. Environmental Protection Agency (EPA), Region 7 (Complainant) and GBW Railcar Services, LLC (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

**ALLEGATIONS**

**Jurisdiction**

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Kansas Statute Annotated 65-3431, Nebraska Revised Statute 81-1505(13), Sections 3001, 3002, 3005 and 3010 of RCRA, 42 U.S.C §§ 6921, 6922, 6925 and 6930, and the Kansas and Nebraska regulations which incorporate the following federal regulations by reference, the standards for identifying and listing of hazardous waste (40 C.F.R. Part 261 and 262.11), the standards applicable to generators of hazardous waste (40 C.F.R. Part 262), the standards for universal waste management (40 C.F.R. Part 273), and the standards for the management of used oil (40 C.F.R. Part 279).

### **Parties**

3. Complainant is the Branch Chief of the Waste Enforcement and Materials Management branch in the Air and Waste Management Division of EPA, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is GBW Railcar Services, LLC, a company authorized to operate under the laws of Kansas and Nebraska.

### **Statutory and Regulatory Framework**

5. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

6. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 3001, 3002, 3005, and 3010 of RCRA, 42 U.S.C. §§ 6921, 6922, 6925, and 6930, to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Parts 261, 262, 273, and 279.

7. Section 3001 of RCRA, 42 U.S.C. § 6921, requires the Administrator to develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.

8. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

9. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

10. Section 1004(15) of RCRA, 7 U.S.C. § 6903(15), defines “person” as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

11. The regulation at 40 C.F.R. § 260.10 defines “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating,

storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation.

12. “Solid waste” is defined at 40 C.F.R § 261.2.
13. “Hazardous waste” is defined at 40 C.F.R. § 261.3.
14. The regulation at 40 C.F.R. § 260.10 defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.
15. The regulation at 40 C.F.R. § 260.10 defines “small quantity generator” or “SQG” as a generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.
16. The regulation at 40 C.F.R. § 260.10 defines “large quantity generator” or “LQG” as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).
17. The State of Nebraska has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of the Nebraska Administrative Code, Title 128 – Rules and Regulations Governing Hazardous Waste Management (hereinafter 128 N.A.C.).
18. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter K.A.R.).
19. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The States of Kansas and Nebraska have been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
20. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). The Debt Collection Improvement Act of 2008 and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred from January 12, 2009, through November 2, 2015, and to \$95,284 for violations that occur after

November 2, 2015. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

### **General Factual Background**

21. Respondent is a company and authorized to conduct business within the States of Kansas and Nebraska. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

22. Respondent’s facilities subject to this matter each operate railcar maintenance facilities and are located at:

- a. 15624 258<sup>th</sup> Road, Cummings, Kansas (hereinafter Atchison Facility). Respondent employs approximately 30 people at this facility.
- b. 1604 South Spruce Street, Coffeyville, Kansas (hereinafter Coffeyville Facility). Respondent employs approximately 45 people at this facility.
- c. 1206 North Hoover Road, Junction City, Kansas (hereinafter Junction City Facility). Respondent employs approximately 25 people at this facility.
- d. 701 Klayder Drive, Neodesha, Kansas (hereinafter Neodesha Facility). Respondent employs approximately 35 people at this facility.
- e. 4901 South 28<sup>th</sup> Street, Omaha, Nebraska (hereinafter Omaha South Facility). Respondent employs approximately 82 people at this facility.
- f. 13810 L Street, Omaha, Nebraska (hereinafter Omaha West Facility). Respondent employs approximately 30 people at this facility.

23. EPA inspectors conducted RCRA Compliance Evaluation Inspections of the hazardous waste management practices at Respondent’s facilities on the following dates. Based on a review of the inspection reports and the information provided during the inspections by facility personnel, EPA determined Respondent’s facilities’ generator status as follows:

- a. Atchison Facility was inspected on August 9-11, 2016. On or about February 17, 2016, Respondent updated its notification for this facility to EPA, pursuant to Section 3010 of RCRA, as an LQG. At the time of the inspection, it was determined this facility was operating as an LQG of hazardous waste, a Small Quantity Handler of universal waste, and a used oil generator.
- b. Coffeyville Facility was inspected on July 13-14, 2016. On or about February 22, 2016, Respondent updated its notification for this facility to EPA as an LQG. At the time of the inspection, it was determined this facility was operating as an LQG of hazardous waste, a Small Quantity Handler of universal waste, and a used oil generator.
- c. Junction City Facility was inspected on August 30-31, 2016. On or about

February 6, 2015, Respondent updated its notification for this facility to EPA as an LQG. At the time of the inspection, it was determined this facility was operating as an SQG of hazardous waste, a Small Quantity Handler of universal waste and used oil generator.

- d. Neodesha Facility was inspected on October 4-5, 2016. On or about February 29, 2016, Respondent updated its notification for this facility to EPA as an LQG. At the time of the inspection, it was determined this facility was operating as an LQG of hazardous waste, a Small Quantity Handler of universal waste and used oil generator.
- e. Omaha South Facility was inspected on May 16-17, 2016. On or about February 1, 2016, Respondent updated its notification for this facility to EPA as an SQG. At the time of the inspection, it was determined this facility was operating as an SQG of hazardous waste, a Small Quantity Handler of universal waste and used oil generator.
- f. Omaha West Facility was inspected on May 18, 2016. On or about February 5, 2016, Respondent updated its notification for this facility to EPA, pursuant to Section 3010 of RCRA, as an SQG. At the time of the inspection, it was determined that this facility was operating as an SQG of hazardous waste, a Small Quantity Handler of universal waste, and used oil generator.

24. Respondent's facilities have been assigned the following EPA ID Numbers:

- a. Atchison Facility: KSD043936277.
- b. Coffeyville Facility: KSD046371027.
- c. Junction City Facility: KSD010643666.
- d. Neodesha Facility: KSD054085600.
- e. Omaha South Facility: NED986369098.
- f. Omaha West Facility: NED981117153.

### **Violations**

25. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

#### **Count 1**

#### **Failure to Conduct Hazardous Waste Determinations**

26. Complainant hereby incorporates the allegations contained in Paragraphs 21 through 24 above, as if fully set forth herein.

27. Pursuant to 40 C.F.R. § 262.11, as incorporated by reference at K.A.R. 28-31-262 and 128 N.A.C., ch. 9 § 007.01 and ch. 4 § 002, a generator of "solid waste," as that term is defined in 40 C.F.R. § 261.2, is required to determine if the solid waste is a hazardous waste.

28. At the time of the inspections, Respondent was generating the following solid waste streams:

- a. Atchison Facility: at least three waste streams.
- b. Coffeyville Facility: at least four waste streams.
- c. Junction City Facility: at least nine waste streams.
- d. Neodesha Facility: at least three waste streams.
- e. Omaha South Facility: at least three waste streams.
- f. Omaha West Facility: at least one waste stream.

29. Respondent had not conducted a hazardous waste determination on the 23 solid waste streams at the time of the inspections.

30. Respondent's failure to make a hazardous waste determination on the above referenced waste streams is a violation of 40 C.F.R. § 262.11, K.A.R. 28-31-262, and 128 N.A.C., ch. 9 § 007.01 and ch. 4 § 002.

### Count 2

#### Operating as Treatment, Storage or Disposal Facilities Without RCRA Permits or RCRA Interim Status

31. Complainant hereby incorporates the allegations contained in Paragraphs 21 through 24 above, as if fully set forth herein.

32. Kansas Statute Annotated 65-3431, Neb. Rev. Stat. 81-1505(13), Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 128 N.A.C. ch. 12, K.A.R. 28-31-270 and 40 C.F.R. Part 270 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

33. At the time of the inspections, Respondent did not have permits or interim status for any facilities listed in Paragraph 22.

#### **Large Quantity Generator Requirements**

34. The regulations at K.A.R. 28-31-262, and 40 C.F.R. § 262.34(a) state that a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(a)(1)-(4) are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at their facility for any length of time. Respondent failed to comply with the following conditions:

*Failure to document weekly hazardous waste inspections*

35. The regulation at K.A.R. 28-31-262a(c), which incorporates 40 C.F.R. § 265.15(d) by reference, requires the owner or operator to record inspections in an inspection log or summary and keep the records for at least three years from the date of inspection. The records must include, but not be limited to, the date and time of the inspection.

36. At the time of the Atchison Facility inspection, the Respondent failed to document weekly inspections.

37. At the time of the Coffeyville Facility inspection, Respondent failed to record the time of the inspections.

*Failure to store hazardous waste in containers that are in good condition*

38. The regulation at K.A.R. 28-31-262, which incorporates 40 C.F.R. § 262.34(a)(1)(i) by reference, requires that while being accumulated on-site, the hazardous waste is placed in containers and the generator complies with the applicable requirements of Subpart I of 40 C.F.R. Part 265.

39. Pursuant to 40 C.F.R. § 265.171, as found in 40 C.F.R. Part 265, Subpart I, the owner or operator must transfer hazardous waste from a container that is not in good condition or leaking to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this part.

40. At the time of the Atchison Facility inspection, Respondent failed to transfer hazardous waste from the following containers which were not in good condition to containers that were in good condition:

- a. One, 55-gallon container of crude oil waste containing solids; and
- b. One, 55-gallon container of aerosol puncturing liquid waste.

*Failure to date hazardous waste accumulation containers*

41. The regulation at K.A.R. 28-31-262, which incorporates 40 C.F.R. § 262.34(a)(2) by reference, requires generators to clearly mark the date upon which each period of accumulation began on each container.

42. At the time of the Atchison Facility inspection, three 55-gallon containers of hazardous crude oil waste were not marked with the date upon which accumulation began.

43. At the time of the Neodesha Facility inspection, one 5-gallon container of hazardous outdated Carboline Protective Coating Plastic Thinner #69 was not marked with the date upon which accumulation began.

*Failure to label hazardous waste accumulation containers*

44. The regulation at K.A.R. 28-31-262, which incorporates 40 C.F.R. § 262.34(a)(3) by reference, requires generators to clearly mark each container of hazardous waste with the words "Hazardous Waste" while accumulating on-site.

45. At the time of the Atchison Facility inspection, fifteen 55-gallon containers of hazardous crude oil waste were not marked with the words "Hazardous Waste".

46. At the time of the Neodesha Facility inspection, one 5-gallon container of hazardous outdated Carboline Protective Coating Plastic Thinner #69 was not marked with the words "Hazardous Waste".

*Failure to operate to minimize a risk of fire*

47. The regulation at K.A.R. 28-31-262, which incorporates 40 C.F.R. § 262.34(a)(4) by reference, requires, in part, that the generator comply with Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

48. Pursuant to 40 C.F.R. § 265.31, as found in 40 C.F.R. Part 265, Subpart C, facilities must be maintained and operated to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which would threaten human health or the environment.

49. At the time of the Neodesha Facility inspection, two cigarette butts were found five and ten feet from the hazardous waste storage area #2.

*Failure to maintain adequate aisle space*

50. The regulation at K.A.R. 28-31-262, which incorporates 40 C.F.R. § 262.34(a)(4) by reference, requires, in part, that the generator comply with Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

51. Pursuant to 40 C.F.R. § 265.35, as found in 40 C.F.R. Part 265, Subpart C, the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

52. At the time of the Atchison Facility inspection, it was discovered that Respondent failed to maintain adequate aisle space in hazardous waste storage area #1. There was inadequate aisle space among 14 containers of hazardous waste crude oil.

*Failure to keep emergency equipment list current in contingency plan*

53. The regulation at K.A.R. 28-31-262, which incorporates 40 C.F.R. § 262.34(a)(4) by reference, requires, in part, that the generator comply with Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

54. Pursuant to 40 C.F.R. § 265.52(e), as found in 40 C.F.R. Part 265, Subpart D, the contingency plan must include an up to date list of all emergency equipment at the facility, the location and physical description of each item, and a brief outline of its capabilities.

55. At the time of the Neodesha Facility inspection, the locations of the fire extinguishers and spill kits were not identified.

*Failure to submit a copy of contingency plan to local agencies*

56. The regulation at K.A.R. 28-31-262, which incorporates 40 C.F.R. § 262.34(a)(4) by reference, requires, in part, that the generator comply with Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

57. Pursuant to 40 C.F.R. § 265.53(b), as found in 40 C.F.R. Part 265, Subpart D, the owner or operator must submit a copy of the contingency plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

58. At the time of the Atchison Facility inspection, the facility had not submitted a copy of its contingency plan to the emergency authorities.

*Failure to perform introductory hazardous waste training*

59. The regulation at K.A.R. 28-31-262, which incorporates 40 C.F.R. § 262.34(a)(4) by reference, requires, in part, that the generator comply with Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

60. Pursuant to 40 C.F.R. § 265.16(a)(1) facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches facility personnel how to perform their duties in a way that ensures the facility's compliance with the requirements of this part.

61. At the time of the Atchison Facility inspection, the facility had not established a hazardous waste management training program.

*Failure to perform annual refresher of hazardous waste training*

62. The regulation at K.A.R. 28-31-262, which incorporates 40 C.F.R. § 262.34(a)(4) by reference, requires, in part, that the generator comply with Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

63. Pursuant to 40 C.F.R. § 265.16(c) facility personnel must take part in an annual review of the initial RCRA training program.

64. At the time of the Neodesha Facility inspection, facility personnel whose positions relate to hazardous waste management had not completed refresher training.

*Failure to maintain hazardous waste job descriptions*

65. The regulation at K.A.R. 28-31-262, which incorporates 40 C.F.R. § 262.34(a)(4) by reference, requires, in part, that the generator comply with Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

66. Pursuant to 40 C.F.R. § 265.16(d)(2) the owner or operator must maintain a written job description for each position at the facility related to hazardous waste management including the requisite skill, education, or other qualifications.

67. At the time of the Neodesha Facility inspection, Respondent's written job descriptions failed to include a description of duties related to hazardous waste management.

*Failure to maintain training documentation*

68. The regulation at K.A.R. 28-31-262, which incorporates 40 C.F.R. § 262.34(a)(4) by reference, requires, in part, that the generator comply with Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

69. Pursuant to 40 C.F.R. § 265.16(d)(4), a generator must maintain records that document the training or job experience required under 40 C.F.R. §§ 265.16(a), (b), and (c) has been given to, and completed by, facility personnel.

70. At the time of the Neodesha Facility inspection, Respondent's records did not document training or job experience or the information required by 40 C.F.R. §§ 265.16(a), (b), and (c).

**Small Quantity Generator Requirements**

71. The regulations at 128 N.A.C., ch. 9 § 007.03 and K.A.R. 28-31-262, which incorporate 40 C.F.R. § 262.34(d) by reference, state that a generator may accumulate hazardous waste on-site for one hundred and eighty days or less (or two hundred and seventy days if the waste is transported more than 200 miles for off-site treatment, storage, or disposal) without a permit or without interim status, provided the conditions listed in 40 C.F.R. § 262.34(d) are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at its facility for any length of time. Respondent failed to comply with the following conditions:

*Failure to close hazardous waste accumulation containers*

72. The regulation at K.A.R. 28-31-262, which incorporates 40 C.F.R. § 262.34(d)(2) by reference, requires that while being accumulated on-site, the hazardous waste must be placed in containers and the generator must comply with the applicable requirements of Subpart I of 40 C.F.R. Part 265.

73. Pursuant to 40 C.F.R. § 265.173(a), as found in 40 C.F.R. Part 265, Subpart I, generators must close hazardous waste storage containers during storage.

74. At the time of the Junction City inspection, the following hazardous waste accumulation containers were open:

- a. Two, 55-gallon containers of waste paint;
- b. Thirteen, 5-gallon containers of waste paint; and
- c. One, ½-gallon container of waste paint.

*Failure to date hazardous waste accumulation containers*

75. The regulation at 128 N.A.C., ch. 9 § 007.03D, as it references 128 N.A.C., ch. 10 § 004.01F, and K.A.R. 28-31-262 which incorporates by reference 40 C.F.R. § 262.34(d)(4) referencing 40 C.F.R. § 262.34(a)(2), require generators to clearly mark the date upon which each period of accumulation began on each container.

76. At the time of the Junction City inspection, the following hazardous waste accumulation containers were not marked with the date upon which accumulation began:

- a. Two, 55-gallon drums of waste paint;
- b. Thirteen, 5-gallon containers of waste paint; and
- c. One, ½-gallon container of waste paint.

77. At the time of the Omaha South Facility inspection, one, 55-gallon container of hazardous waste solvent was not marked with the date upon which accumulation began.

*Failure to label hazardous waste accumulation containers*

78. The regulation at 128 N.A.C., ch. 9 § 007.03C as it references 128 N.A.C., ch. 10 § 004.01G, and K.A.R. 28-31-262 which incorporates 40 C.F.R. 262.34(d)(4) referencing 40 C.F.R. § 262.34(a)(3), require generators to clearly mark each container of hazardous waste with the words “Hazardous Waste” while accumulating on-site.

79. At the time of the Junction City inspection, the following hazardous waste accumulation containers were not marked with the words “Hazardous Waste”:

- a. Two, 55-gallon drums of waste paint;
- b. Thirteen, 5-gallon containers of waste paint; and
- c. One, ½-gallon container of waste paint.

80. At the time of the Omaha South Facility inspection, one, 55-gallon container of hazardous waste solvent was not marked with the words "Hazardous Waste" while accumulating on-site.

*Failure to familiarize emergency preparedness information with responders*

81. The regulation at 128 N.A.C., ch. 9 § 007.03F references 128 N.A.C., ch. 17 § 007.1A, which incorporates 40 C.F.R. § 262.34(d)(4) referencing Subpart C in 40 C.F.R. Part 265.

82. Pursuant to 128 N.A.C., ch. 17 § 007.1A and 40 C.F.R. § 265.37(a)(1), as found in 40 C.F.R. Part 265, Subpart C, the owner or operator must attempt to make the arrangements with police, fire departments and emergency response teams, as appropriate, for the type of waste handled at the facility and the potential need for the services of these organizations.

83. At the time of the Omaha South inspection, the facility failed to familiarize local responders with emergency preparedness information.

*Failure to attempt emergency arrangements with hospital*

84. The regulation at 128 N.A.C., ch. 9 § 007.03F references 128 N.A.C., ch. 17 § 007.1D, which incorporates 40 C.F.R. § 262.34(d)(4) referencing Subpart C in 40 C.F.R. Part 265.

85. Pursuant to 128 N.A.C., ch. 17 § 007.1D and 40 C.F.R. § 265.37(a)(4), as found in 40 C.F.R. Part 265, Subpart C, the owner or operator must attempt to make arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

86. At the time of the Omaha South Facility inspection, the facility failed to familiarize the hospitals with emergency preparedness information.

**Satellite Accumulation Requirements**

87. The regulations at 128 N.A.C. ch. 9 § 007.04, and K.A.R. 28-31-262 which incorporate 40 C.F.R. § 262.34(c)(1) by reference, allow a generator to accumulate as much as fifty-five (55) gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.33(e) in containers at or near any point of generation where waste initially accumulates, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with 128 N.A.C. ch. 9 § 007.03 and 40 C.F.R. § 262.34(a) provided the generator comply with various handling requirements. This type of accumulation is known as "satellite accumulation".

88. The regulations at 128 N.A.C. ch. 9 § 007.04A2 and K.A.R. 28-31-262, which incorporate 40 C.F.R. § 262.34(c)(1)(ii) by reference, allow a generator to accumulate as much

as fifty-five (55) gallons of hazardous waste in a satellite accumulation area, provided the generator mark the containers either with the words, "Hazardous Waste," or with other words that identify the contents of the container.

89. At the time of the Atchison Facility inspection, one 55-gallon container of hazardous waste paint/solvent mixture were not labeled with the words, "Hazardous Waste" or other words to identify the contents of the container.

90. At the time of the Omaha South Facility inspection the following containers were not labeled with the words, "Hazardous Waste" or other words to identify the contents of the container:

- a. One, 55-gallon container of hazardous waste solvent; and
- b. One, 30-gallon container of hazardous aerosol puncturing waste.

91. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 35 through 90 above, Respondent was not authorized to accumulate hazardous waste at these facilities for any length of time, and therefore was operating hazardous waste storage facilities without permits in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

**Count 3**  
**Failure to Comply with Universal Waste Management Requirements**

92. Complainant hereby incorporates the allegations contained in Paragraphs 21 through 24 above, as if fully set forth herein.

*Failure to close universal waste containers*

93. The regulations at 128 N.A.C., ch. 25 § 012.04A and 40 C.F.R. § 273.13(d)(1) require a small quantity handler of universal waste to manage lamps in a way that prevents releases by containing the lamps in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

94. At the time of the Omaha South Facility inspection, Respondent failed to close a cardboard box of lamps in order to prevent releases and breakage.

95. Respondent's failure to close the universal waste containers or packages described above to prevent releases and breakage is a violation of 128 N.A.C., ch. 25 § 012.04A and 40 C.F.R. § 273.13(d)(1).

*Accumulation of universal waste for longer than one year*

96. The regulations at 128 N.A.C., ch. 25 § 014.01 and 40 C.F.R. §§ 273.15(a) and (b) state that a small quantity handler of universal waste may accumulate universal waste for no

longer than one (1) year from the date the universal waste is generated, or received from another handler, unless such accumulation is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

97. At the time of the Omaha West Facility inspection, one cardboard box of lamps was dated May 5, 2015, which exceeded one year of accumulation.

98. Respondent's accumulation of the universal waste lamps described above for longer than one year is a violation of 128 N.A.C., ch. 25 § 014.01 and 40 C.F.R. § 273.15(a).

**Count 4**  
**Failure to Comply with Used Oil Regulations**

99. Complainant hereby incorporates the allegations contained in Paragraphs 21 through 24 above, as if fully set forth herein.

*Failure to label used oil containers*

100. The regulations at 128 N.A.C., ch. 7 § 009.04A3 and K.A.R. 28-31-279 which incorporate 40 C.F.R. § 279.22(c)(1) by reference, require used oil generators to label or clearly mark containers and above ground tanks used to store used oil at generator facilities with the words "Used Oil".

101. At the time of the Omaha South Facility inspection, Respondent failed to label or clearly mark two, 55-gallon containers of used oil.

102. At the time of the Atchison Facility inspection, Respondent failed to label or clearly mark two, 5-gallon containers of used oil.

103. At the time of the Junction City Facility inspection, Respondent failed to label or clearly mark one, 5-gallon container of used oil.

104. At the time of the Coffeyville Facility inspection, Respondent failed to label or clearly mark the following used oil containers:

- a. Four, 5-gallon containers of used oil; and
- b. One, 55-gallon container of used oil.

105. Respondent's failure to label the containers of used oil described above are violations of 128 N.A.C., ch. 7 § 009.04A3 and K.A.R. 28-31-279 which incorporates 40 C.F.R. § 279.22(c)(1) by reference.

*Failure to store used oil in containers that are in good condition*

106. The regulation at K.A.R. 28-31-279, which incorporates 40 C.F.R. § 279.22(b)(1) by reference, requires containers and aboveground tanks used to store used oil at a generator

facility to be in good condition which includes no severe rusting, apparent structural defects, or deterioration.

107. At the time of the Atchison Facility inspection, the following containers and aboveground tanks were found to be in poor condition:

- a. One, 250-gallon aboveground storage tank which was severely rusted and had a deep crease in the body; and
- b. One, 55-gallon container of used oil filters which was severely rusted and had a dented lid.

108. At the time of the Junction City Facility inspection, one, 55-gallon container of used oil had a deep crease in the body.

109. Respondent's failure to store used oil in containers that are in good condition are violations of K.A.R. 28-31-279, which incorporates 40 C.F.R. § 279.22(b)(1).

**Count 5**  
**Failure to Properly Manifest Hazardous Waste Shipments**

*Failure to use and failure to properly use a manifest for off-site shipment of hazardous waste*

110. The regulations at 128 N.A.C., ch. 9, § 007.06, referencing 128 N.A.C., ch. 10 § 002.01A and K.A.R. 28-31-262, which incorporate 40 C.F.R. § 262.20(a)(1) by reference, require a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal must prepare a Manifest on EPA Form 8700-22A, according to the instructions in the appendix to Part 262.

111. The appendix to Part 262, Uniform Hazardous Waste Manifest and Instructions, requires the generator to include the total quantity of waste (Item 11) and the waste codes for each waste stream (Item 13).

112. At the time of the Omaha South Facility inspection, the facility representative stated that 32, 5-gallon containers of waste epoxy paint/solvent mix were disposed of in the general trash each month without a manifest.

113. At the time of the Omaha West Facility inspection, the facility representative stated that solvent contaminated gloves were dried and disposed of in the general trash each month without a manifest.

114. At the time of the Coffeyville Facility inspection, the facility representative stated that hazardous Personal Protective Gear that was generated from cleaning tank cars was disposed of in the general trash each month without a manifest.

115. At the time of the Neodesha Facility inspection, one manifest reviewed failed to include the quantity of wastes on the manifest.

116. At the time of the Neodesha Facility inspection, one manifest reviewed failed to include the waste codes for hazardous waste included in the shipment.

117. Respondent's failure to properly dispose of hazardous waste under a manifest and Respondent's failure to properly complete a hazardous waste manifest are violations of 128 N.A.C., ch. 9, § 007.06, referencing 128 N.A.C., ch. 10 § 002.01A and K.A.R. 28-31-262, which incorporates 40 C.F.R. § 262.20(a) by reference.

*Failure to have a Land Disposal Restriction notice on file*

118. The regulation at K.A.R. 28-31-268, which incorporates 40 C.F.R. § 268.7(a)(2) by reference, requires the generator to send a one-time written notice with the initial shipment to each treatment or storage facility receiving waste that does not meet the treatment standards, or if the generator chooses not to make the determination of whether the waste must be treated.

119. At the time of the Junction City Facility inspection, the initial land disposal restriction notice for crude oil hazardous waste sent to EQ Oklahoma was not maintained.

120. Respondent's failure to maintain on file the initial land disposal restriction notice identified above is a violation of K.A.R. 28-31-268, which incorporates 40 C.F.R. § 268.7(a)(2).

**Count 6**

**Failure to Provide Notification**

121. The regulation at K.A.R. 28-31-4(c) requires each person to update the information associated with that person's EPA identification number if there is a change in the information no more than 60 days after the change occurs.

122. At the time of the Atchison Facility inspection, Respondent failed to update the notification to the state of Kansas within 60 days of change in site contact.

123. At the time of the Junction City Facility inspection, Respondent failed to update the notification to the state of Kansas within 60 days of change in site contact.

124. Respondent's failure to update the notifications above to the state of Kansas is a violation of K.A.R. 28-31-4.

**CONSENT AGREEMENT**

125. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;

- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action;
- g. waives any right to contest the allegations set forth herein; and
- h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

126. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein, performance of the compliance actions described below.

127. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

128. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

### **Penalty Payment**

129. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a mitigated civil penalty of One Hundred Fifty Thousand Seven Hundred and Thirty-One Dollars (\$150,731), as set forth below.

130. Respondent shall pay the penalty within sixty (60) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

131. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

Kelley Catlin, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

132. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

### **Compliance Actions**

133. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.

134. Within thirty (30) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit an inventory to EPA for each facility, in accordance with Paragraph 136 below, identifying each solid waste stream and whether the solid waste is a hazardous waste. If Respondent has already provided documentation to EPA regarding the waste determination, Respondent shall note the information has been provided to EPA and shall identify whether the waste stream is hazardous or non-hazardous. For any solid waste streams generated since the Effective Date of this Consent Agreement and Final Order, Respondent shall perform an accurate hazardous waste determination for each newly generated solid waste stream at each of Respondent's facilities. This documentation will include, but is not limited to, the following information:

- a. A description of the waste stream which includes a detailed description of the process or processes that generate the waste.
- b. A determination of whether or not the waste has been excluded from regulation under 40 C.F.R. § 261.4.
- c. A determination of whether or not the waste has been listed as a hazardous waste in Subpart D of 40 C.F.R. Part 261.
- d. A determination of whether or not the waste is identified in 40 CFR Part 261 Subpart C. To determine whether the waste fails any of the

characteristics in Subpart C, the waste may need to be analyzed using one of the methods found in Subpart C of Part 261, or by applying knowledge of the waste characteristics based upon the material or processes used. Any laboratory analyses used to make this determination must be provided to EPA.

- e. Copies of hazardous waste manifests demonstrating that all the identified hazardous waste has been properly disposed.

135. Respondent shall submit a Bi-Annual Compliance Report to EPA, in accordance with Paragraph 136 below. The first submission is due within sixty (60) days of the Effective Date of this Consent Agreement and Final Order. Items with an asterisk (\*) need only be provided in the first submission. The subsequent two (2) submissions shall be submitted within one hundred eighty (180) days of the previous submission. The Bi-Annual Compliance Report shall include the following for each of Respondent's facilities:

- a. \*A narrative description with supporting documentation to show compliance with the training requirements set forth at 40 C.F.R. § 262.34(a)(4) referencing 40 C.F.R. § 265.16, as applicable.
- b. \*A narrative description with supporting documentation to show compliance with the contingency plan requirements set forth at 40 C.F.R. § 262.34(a)(4) referencing 40 C.F.R. § 265.51, as applicable.
- c. \*A narrative description with supporting documentation to show compliance with emergency preparedness requirements set forth at 40 C.F.R. § 262.34(d)(4), as applicable.
- d. A narrative description with supporting documentation, including photographs, to show all hazardous waste accumulation containers and satellite accumulation containers are properly managed pursuant to 40 C.F.R. §§ 262.34(a)(2)-(4), 262.34(c), and 262.34(d)(2) and (d)(4), as applicable.
- e. A narrative description with supporting documentation, to show compliance with the inspection requirements of KAR 28-31-262a(c). Respondent shall provide the five (5) inspection reports generated prior to the Bi-Annual Compliance submission.
- f. A narrative description with supporting documentation, including photographs, to show all used oil containers are properly managed pursuant to 40 C.F.R. § 279.
- g. A narrative description with supporting documentation, including photographs, that all universal waste containers are properly managed pursuant to 40 C.F.R. §§ 273.13, 273.14, and 273.15.
- h. Documentation verifying universal waste containers are timely and properly shipped off-site, as applicable.
- i. \*A narrative description to show current compliance with the universal waste training requirements set forth at 40 C.F.R. § 273.16.
- j. Copies of each manifest prepared for hazardous waste shipped off site for the reporting period pursuant to 40 C.F.R. §§ 262.20 and 262.40(a).

- k. \*Update the states of Kansas and Nebraska pursuant to K.A.R. 28-31-4 and 128 N.A.C. ch. 4.

136. Respondent shall submit all documentation generated to comply with the requirements as set forth in the immediately preceding paragraphs to the following address:

Edwin G. Buckner, PE  
AWMD/WEMM  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

### **Effect of Settlement and Reservation of Rights**

137. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

138. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

139. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

140. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

141. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Fifty-Seven Thousand Three Hundred Ninety-One Dollars (\$57,391) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

142. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents,

hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

143. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

144. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

### **General Provisions**

145. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

146. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

147. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

148. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

149. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

150. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

7/18/18  
Date

John J. Smith  
Mary Goetz, Branch Chief  
for Waste Enforcement and Materials Management Branch  
Air and Waste Management Division

7/18/18  
Date

Kelley Catlin  
Kelley Catlin  
Office of Regional Counsel

RESPONDENT:

GBW Railcar Services, LLC

7-18-18  
Date

*THayes*  
Signature

Thomas E. Hayes  
Printed Name

Assistant General Counsel  
Title

**FINAL ORDER**

Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

July 18, 2018  
Date

### CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Kelley Catlin (e-copy).

Copy via Email to Respondent:

Ellen Goldman (e-copy).

Copy via Email to the State of Kansas and Nebraska:

William L. Bider, Director (e-copy)  
Bureau of Waste Management  
Kansas Department of Health and Environment

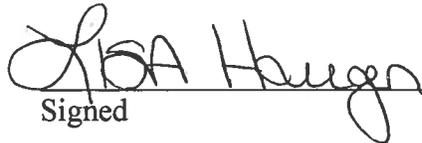
Ken Powell (e-copy)  
Compliance and Enforcement, Waste Reduction, and Assistance Section  
Kansas Department of Health and Environment

Nebraska Electronic Docket (e-copy)  
mailto:[NDEQ.epainspections@nebraska.gov](mailto:NDEQ.epainspections@nebraska.gov)

David Haldeman, Administrator (e-copy)  
Waste Management Division  
Nebraska Department of Environmental Quality

Jeff Edwards (e-copy)  
Nebraska Department of Environmental Quality

Dated this 19 day of July, 2018.

  
Signed \_\_\_\_\_

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

IN THE MATTER OF )  
 )  
GBW Railcar Services )  
Respondent )  
 )  
 )  
 )  
 )  
\_\_\_\_\_ )

Docket No. RCRA-07-2018-0244

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile/electronic filing of page (23) of the Consent Agreement and Final Order is authorized in this proceeding.

Dated: July 18, 2018

Karina Borromeo

Karina Borromeo

Regional Judicial Officer

Region 7