

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

REGIONAL HEARINGS CLERK
EPA REGION III, PHILA. PA

2014 JUN -9 PM 5:54

RECEIVED

In the matter of:)	
)	
HAGERSTOWN AIRCRAFT)	Docket No. RCRA-03-2011-0112
SERVICES, INC.,)	
)	
Respondent.)	
)	

RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

Respondent, Hagerstown Aircraft Services, Inc., by and through its undersigned counsel, hereby provides this response to the Regional Judicial Officer's (RJO) Order to Show Cause, dated March 13, 2014 (the "Order") issued in the above-captioned matter (the "Enforcement Action"). For the reasons set forth below, Respondent submits that additional information was submitted to the Presiding Officer in October 2013, that efforts have been made to initiate negotiations or settlement of this matter and that good cause exists for granting the relief sought by Respondent.

Respondent set forth its position on this matter in its Motion to Set Aside Default Order and Temporarily Stay Proceedings, filed on August 5, 2013 ("Respondent's Motion"). The Order correctly states that Respondent did not file an optional response to Complainant's Reply to Respondent's Motion to Set Aside Default Order and Temporarily Stay Proceedings, filed on

August 15, 2013 (“Complainant’s Reply”). Respondent believes that it and Complainant clearly stated their positions in their initial respective motions.

However, Respondent did in fact make a supplemental filing on this matter on October 18, 2013 (the “Supplemental Filing”). The Supplemental Filing, a copy of which is enclosed as Exhibit A, was received by the Regional Hearing Clerk on October 21, 2013. The Supplemental Filing provided the Presiding Officer with a copy of a Maryland Department of the Environment (“MDE”) Report of Observations for a hazardous waste management compliance inspection of Respondent’s facility completed by MDE on September 18, 2013. This Report of Observations demonstrates that the corrective measures put in place by Respondent as described in Respondent’s Motion and thereafter fully corrected and resolved all of the violations previously identified at Respondent’s facility. Respondent is also able to state that it has maintained these environmental compliance processes and actions since the MDE’s inspection on September 18th, and remains, to the best of its knowledge, in full compliance with all applicable hazardous waste management regulations. Respondent’s Motion and the Supplemental Filing demonstrate Respondent’s timely response to the shortcomings identified by both the Environmental Protection Agency (“EPA”) and MDE as directed by the Default Order and confirms there is no threat of any continuing harm from outstanding compliance matters.

With regards to negotiations or settlement discussions following the submission of Complainant’s Reply, Respondent subsequently contacted Complainant on two separate occasions in an attempt to initiate settlement negotiations. On September 3, 2013, the undersigned counsel called counsel for Complainant to discuss potential settlement of the matter and possible paths forward. However, Complainant’s counsel declined to enter into such

discussions, citing her client's intent and desire to await the Presiding Officer's ruling on Respondent's Motion and stating that Complainant would only speak with Respondent afterwards. On October 18, 2013, the undersigned counsel sent an email to Complainant's counsel transmitting a courtesy copy of the Supplemental Filing, and again requesting the opportunity to enter into settlement discussions with Complainant (Exhibit B). Counsel for Complainant responded by telephone on October 24, 2013, stating that consistent with the September 3rd discussion, Complainant again declined Respondent's request to meet or discuss settlement of the matter until after the Presiding Officer ruled on Respondent's Motion.

Respondent appreciates and acknowledges there are no known facts to counter Complainant's allegations made in its Administrative Complaint or Motion for Default Order, or that demonstrate a defect in any service provided. However, what Respondent can and believes it has demonstrated is that under its current management the business has quickly addressed the waste management compliance issues that underlie this matter. Because of unfortunate circumstances, Respondent's current management was unable to avail itself of the opportunity to enter into settlement discussions with EPA over the alleged violations. Recognizing that it is Hagerstown Aircraft Services, Inc. facing these allegations, Respondent understands- as EPA clearly does- that it would not enter into any settlement negotiations with a "strong hand" and as such, the end result of any such negotiation would likely reflect that result.

Facing a procedural deadline in July 2013, Respondent's Motion requested time to enter into settlement negotiations to address the issue in a manner ". . . consistent with the provisions

and objectives of the Act and applicable regulations.”¹ 40 C.F.R. § 22.18(b)(1). However, Respondent has subsequently found its efforts to enter into these settlement discussions, a process that the “Agency encourages”, rebuffed by Complainant. *Id.*

Respondent addressed the compliance issues identified in the past by EPA and MDE, continues to maintain its compliance with all applicable hazardous waste management regulations, and understands the allegations presented in the Administrative Complaint as well as the penalties provided in the Default Order remain pending and are not simply going away. It has and continues to seek an opportunity to enter into discussions with Complainant to resolve the allegations in a mutually satisfactory manner, including formal consideration of facts such as Respondent’s ability to pay the penalties ordered in the Default Order. Looking at the totality of the facts of this matter, providing the opportunity to enter into such negotiations would represent an exercise of judgment consistent with a desire to allow for the “efficient, fair, and impartial adjudication of issues arising in [a proceeding].” 40 C.F.R. §22.4(c)(10).

In furtherance of the Agency’s desire to support the settlement of such issues, and in recognition of the unenviable facts of this particular matter, Respondent respectfully requests the Presiding Officer enter an Order: 1) setting aside the Default Order that constitutes an Initial Decision; 2) directing Respondent and Complainant to enter into settlement negotiations; and 3) any other relief as the Presiding Officer deems just, lawful and proper.

¹ Note that Hagerstown Aircraft Services sought to enter into settlement negotiations with EPA shortly before filing Respondent’s Motion, but this request was declined in a telephone call with Complainant’s counsel on July 30, 2013. *See also* Respondent’s Motion, p. 3-4, Exhibit E.

Dated: March 20, 2014

Respectfully submitted,



M. Trent Zivkovich, Esq.
Whiteford, Taylor & Preston LLP
7 St. Paul Street
Baltimore, Maryland 21202
tzivkovich@wtplaw.com
410-347-8778
410-223-4167 (fax)

Counsel for Hagerstown Aircraft Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below I have caused a copy of the foregoing Respondent's Response to Order to Show Cause ("Response") to be served on the Honorable Renée Sarajian, Regional Judicial Officer, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, via FedEx Standard Overnight Delivery service. I further certify that on the date set forth below I have caused the original and one copy of the Response to be served by Federal Express and Standard Overnight Delivery on:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 3
1650 Arch Street, Mail Code 3RC00
Philadelphia, PA 19103-2029

and I have caused one copy of the Response to be served by Federal Express, Standard Overnight Deliver and Electronic Mail on:

Joyce Howell, Esq.
Senior Assistant Regional Counsel
U.S. EPA, Region III
Office of Regional Counsel (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029
Howell.Joyce@epa.gov

and I have caused one copy of the Response to be served by Federal Express, Standard Overnight Delivery on:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3334
Washington, DC 20004

WHITEFORD TAYLOR & PRESTON LLP

M. Trent Zivkovich by BSN

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7 St. Paul Street
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410-223-4167 (fax)

Date: March 20, 2014

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WHITEFORD TAYLOR & PRESTON LLP

M. Trent Zivkovich by JSU

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Date: March 20, 2014

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the matter of:)	
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HAGERSTOWN AIRCRAFT)	Docket No. RCRA-03-2011-0112
SERVICES, INC.,)	
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Respondent.)	
)	

RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

Exhibit A

Respondent's Supplemental Filing

October 18, 2013

WHITEFORD, TAYLOR & PRESTON L.L.P.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1636
MAIN TELEPHONE (410) 347-8700
FACSIMILE (410) 752-7092

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WASHINGTON, DC
WILMINGTON, DE*

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(800) 987-8705

October 18, 2013

VIA FEDEX STANDARD OVERNIGHT DELIVERY

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 3
1650 Arch Street, Mail Code 3RC00
Philadelphia, PA 19103-2029

**Re: Supplemental Filing
Hagerstown Aircraft Services, Inc.
Docket No. RCRA-03-2011-0112
EAB RCRA (3008) Appeal No. 13-01**

Dear Ms. Guy:

Please find enclosed for consideration by the Regional Judicial Officer/Presiding Officer in the above-referenced matter a copy of the Maryland Department of the Environment's Report of Observations for a follow-up compliance inspection completed at Hagerstown Aircraft Services on September 18, 2013. This report, received by Hagerstown Aircraft Services on or about October 10, 2013, supplements the information and exhibits contained in the Motion to Set Aside Default Order and Temporarily Stay Proceedings filed with the Environmental Appeals Board on August 5, 2013, and ordered transferred for consideration by the Regional Judicial Officer for Region 3 on August 15, 2013.

Please don't hesitate to contact me at tzivkovich@wtplaw.com or 410-347-8778 with any questions.

Sincerely,



M. Trent Zivkovich

Lydia Guy, EPA Region 3 Regional Hearing Clerk
October 18, 2013
Page 2

Enclosure

cc: Joyce Howell, Esq., U.S. EPA Region 3

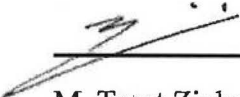
CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Supplemental Filing to be served on the date, by the manner indicated, to the following people:

Via FedEx, Standard Overnight Delivery and courtesy copy via electronic mail:

Joyce Howell, Esq.
Senior Assistant Regional Counsel
U.S. EPA, Region III
Office of Regional Counsel (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029
Howell.Joyce@epa.gov

WHITEFORD TAYLOR & PRESTON LLP



M. Trent Zivkovich, Esq.
Whiteford, Taylor & Preston LLP
7 St. Paul Street
Baltimore, Maryland 21202
tzivkovich@wtplaw.com
410-347-8778
410-223-4167 (fax)

Dated: October 18, 2013



Maryland Department of Environment
Land Management Administration
Hazardous Waste Program
1800 Washington Blvd, Baltimore MD 21230
(410) 537-3400

Report of Observations

RCRA ID #: MDD042682398 **Generator Status:** LQG
Facility Name: Hagerstown Aircraft Services (HAS)
Address: 14235 Oak Springs Road
City: Hagerstown **State:** MD **Zip:** 21742
County: Washington
Site Contact: Kim Potter
Title: Owner/Operator **Phone #:** (301) 733-7604
Other Contact: Alan Shanholtz, Consultant
Inspection Type: FUI-On-Site **Activity #:**
Inspection Start Date: September 18th, 2013
End Date: September 18th, 2013
MDE Lead Inspector: Anthony Enweze
Other Inspector: Paul Sudano

Documentation

<input checked="" type="checkbox"/> Photos/Videos taken	<input type="checkbox"/> Other documentation
<input type="checkbox"/> Documents obtained from facility	<input type="checkbox"/> Request for submission of documents
<input type="checkbox"/> Samples taken by outside source	<input type="checkbox"/> Samples taken by the Department

Checklist: Generator TSD Facility

Introduction

On September 18th, 2013, the Maryland Department of the Environment (MDE), solid Waste Program visited Hagerstown Aircraft Services (thereafter referred as "H.A.S") facility to conduct a second follow-up inspection (FUI). Mr. Paul Sudano and I of MDE arrived at the facility at about 10:25 AM. We met Ms. Kim Potter, the facility owner and staff consultant, Andy Shanholtz. We held a pre-inspection meeting where we discussed all the violations from the initial inspection. Mr. Shanholtz gave an update of improvements made at the facility since MDE last inspection.

Review of outstanding issues

The pre-inspection meeting with Ms. Potter and Mr. Shanholtz of H.A.S revealed that the facility has corrected and resolved the violations uncovered during recent MDE inspections. Based on inspection observations and review of submitted reports, the following corrective measures were achieved to date:

1. Based on H.A.S application, EPA Identification number under the name Alphin Aircraft Services was reassigned to H.A.S effective July 16th, 2013;
2. Hazardous waste containers were labeled and dated to comply with COMAR requirements;
3. Hazardous waste in less than 90-Days storage is disposed within 90 days without permit;
4. Liquid hazardous wastes are kept in containment to prevent releases into the environment;
5. Weekly inspection for less than 90-Day storage was in place as at the time of the inspection;
6. Universal Waste (used lamps) were in closed boxes, labeled, and dated;
7. Contingency plan was completed and implement at the time of the inspection;
8. Employees' CHS training record of July 31st, 2013 were on file at the time of inspection;
9. Aerosol can waste determination was performed and CHS properly stored for disposal;
10. Wastewater treatment unit was disconnected, dismantled and all CHS disposed;
11. Wastewater treatment unit sump with surrounding gutters was cleaned and waste disposed.

Recommendation

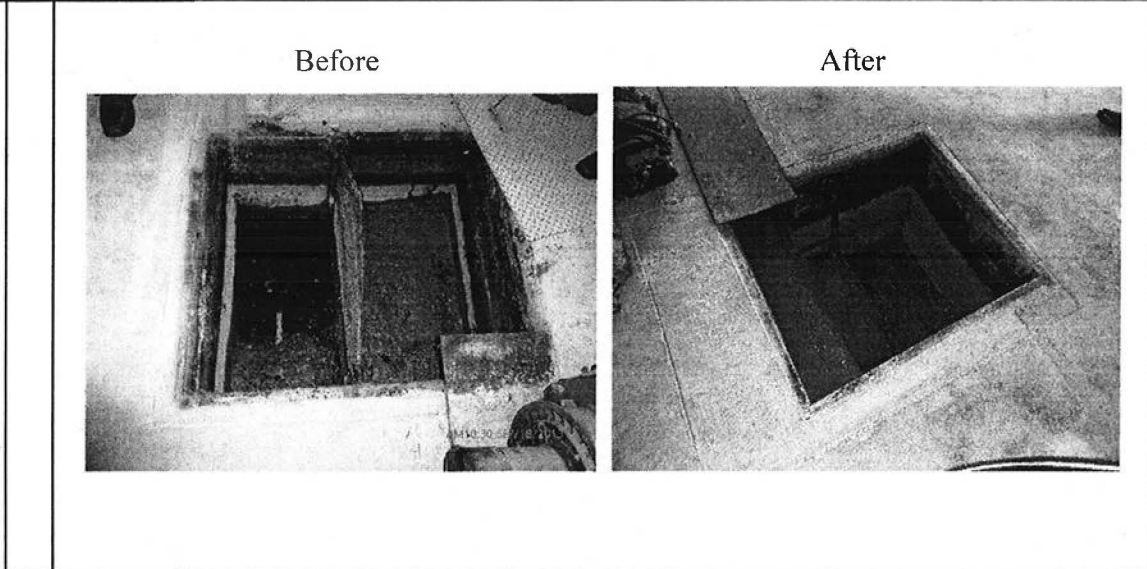
None at this time

Conclusion

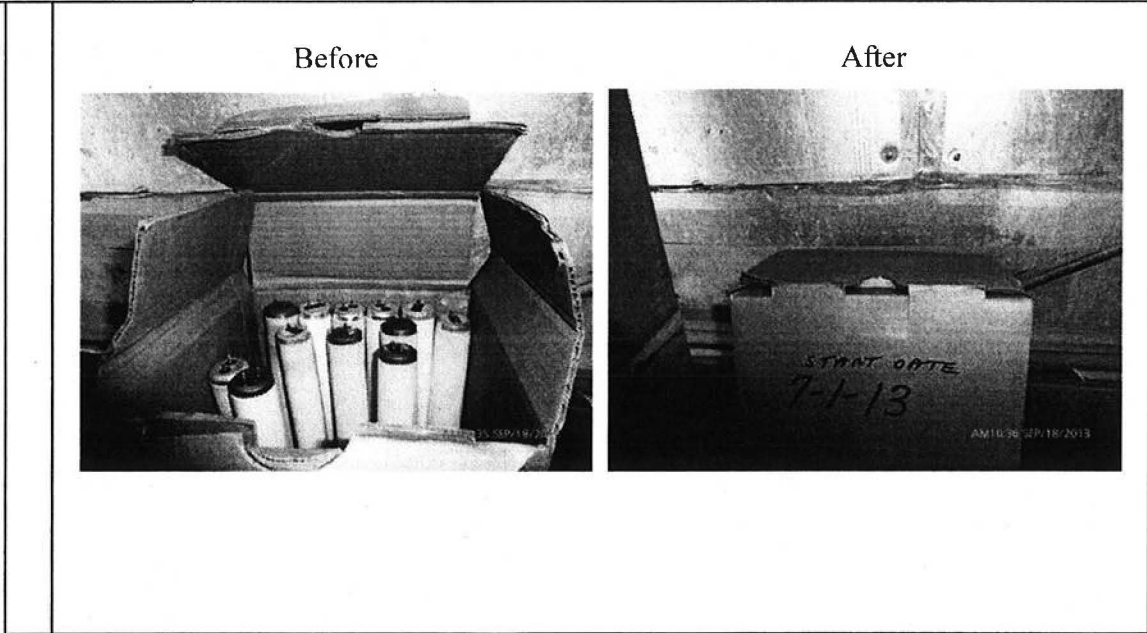
The inspection ended with a post-inspection meeting. MDE informed Ms. Potter and Mr. Shanholtz that the violations uncovered during the MDE initial inspection were corrected without any outstanding issues at the time of this inspection, September 18, 2013.

**Maryland Department of the Environment (MDE)
Hazardous Waste Program
Official Photograph Sheet**

Location:	14235 Oak Springs Road, Hagerstown in Washington County							
Photographer:	Anthony N. Enweze				Witness:			
Photo #	1	of	3		Date:	9/18/2013	Time:	
Description:	Sludge (CHS) in Sump cleaned and waste disposed							

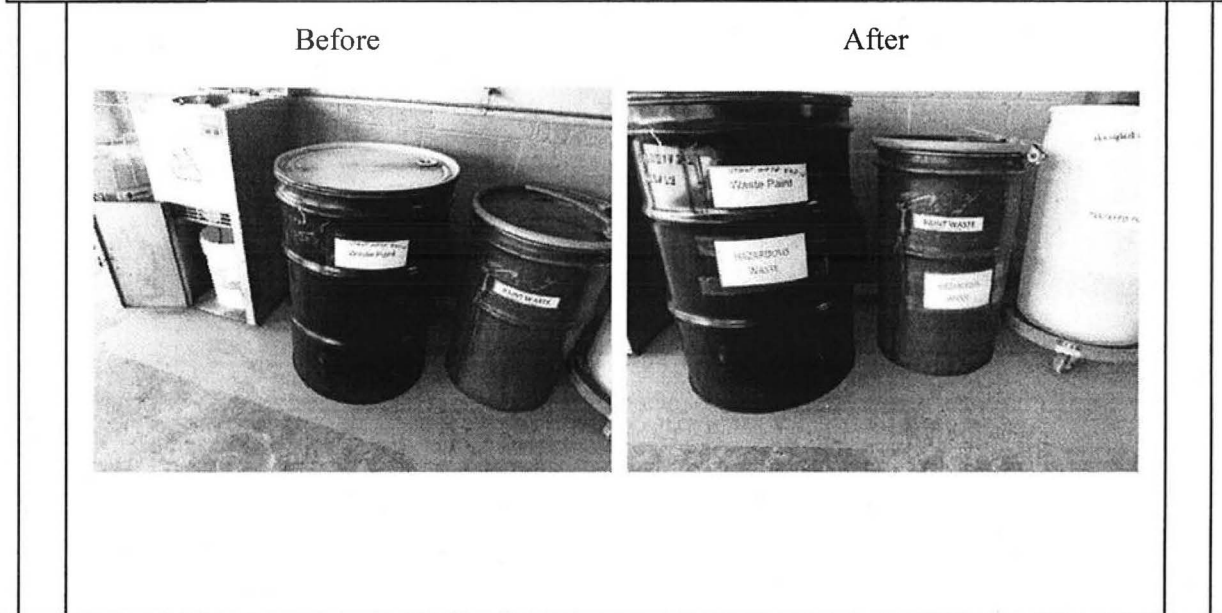


Description:	Open universal waste box corrected (closed) onsite at the time of inspection
---------------------	--

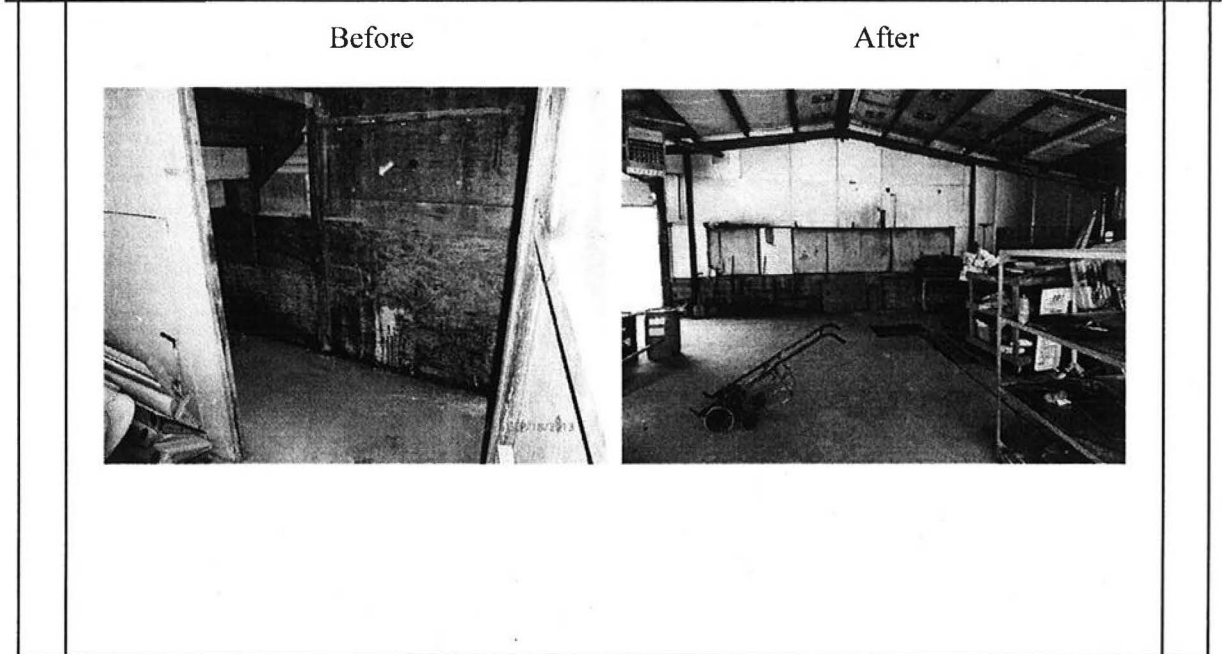


**Maryland Department of the Environment (MDE)
Hazardous Waste Program
Official Photograph Sheet**

Location:	14235 Oak Springs Road, Hagerstown in Washington County						
Photographer:	Anthony N. Enweze			Witness:	None		
Photo #	2	of	3	Date:	9/18/2013	Time:	
Description:	Unlabeled Hazardous Waste Drums at <90-Day Storage labeled during inspection						



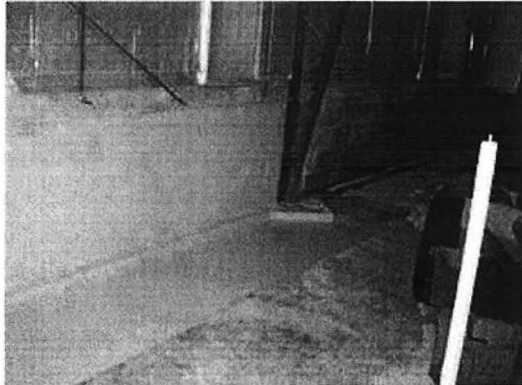
Description:	Wastewater Treatment Unit Disassembled and removed (Empty)
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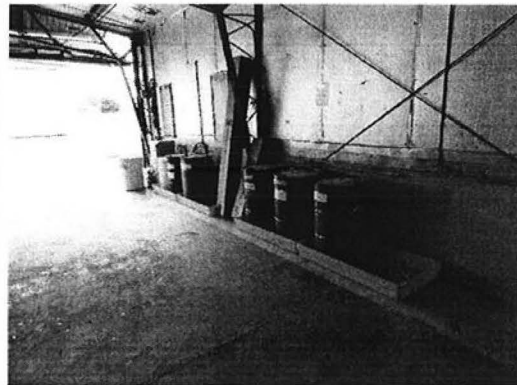
**Maryland Department of the Environment (MDE)
Hazardous Waste Program
Official Photograph Sheet**

Location:	14235 Oak Springs Road, Hagerstown in Washington County						
Photographer:	Anthony N. Enweze			Witness:	None		
Photo #	3	of	3	Date:	9/18/2013	Time:	
Description:	No containment for liquid CHS containers corrected						

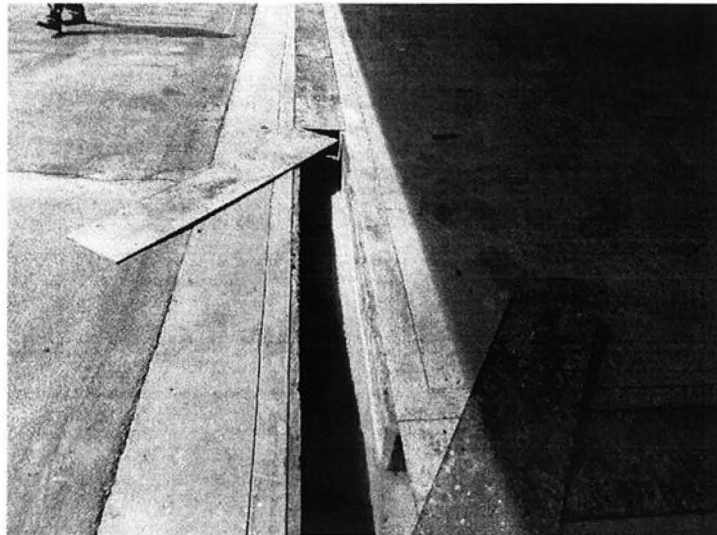
Before



After




Description:	Cleaned Gutter at the CHS Storage Building
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FedEx

552546485934

Ship (P/U) date
Fri 10/18/2013 6:48 pm
Baltimore, MD US




Delivered
Signed for by: J.COLEMAN

Actual delivery :
Mon 10/21/2013 8:29 am
PHILADELPHIA, PA US

Travel History

Date/Time	Activity	Location
- 10/21/2013 - Monday		
6:29 am	Delivered	PHILADELPHIA, PA
7:50 am	On FedEx vehicle for delivery	PHILADELPHIA, PA
6:03 am	At local FedEx facility	PHILADELPHIA, PA
3:45 am	At destination sort facility	LINWOOD, PA
- 10/20/2013 - Sunday		
3:33 pm	Departed FedEx location	MEMPHIS, TN
- 10/19/2013 - Saturday		
9:02 am	Arrived at FedEx location	MEMPHIS, TN
- 10/18/2013 - Friday		
9:40 pm	Left FedEx origin facility	LINTHICUM HEIGHTS, MD
8:48 pm	Picked up	LINTHICUM HEIGHTS, MD
4:54 pm	Shipment information sent to FedEx	

Local Scan Time 

Federal Express Request Form

**This form should be sent with a Federal Express package to the Mailroom
and will be returned to you with the code and tracking number for your records.**

Date Requested:	October 18, 2013
Recipient's Name:	Lydia Guy Regional Hearing Clerk U.S. Environmental Protection Agency, Region 3 1650 Arch Street, Mail Code 3RC00 Philadelphia, PA 19103-2029
Sender's Name:	M. Trent Zivkovich, Esquire
Client/Matter Number:	089603.00001
If charged to the firm, please provide reason:	
Phone #	

Services (Please Check One):			
FedEx Letter	XXXX	FedEx Box	
FedEx Tube		Other	
FedEx Pak			
DELIVERY REQUIREMENTS:			
Priority (by 10:30)			
Standard (by 3:00 PM)	XXXX		
Economy (Two Day)			
Saturday Delivery			
Signature Required	XXXX		
No Signature Required			
Code #			
(please remember to use code)			
TRACKING NUMBER:			

Ref: 089603.01/ZIVKOV Date: 18Oct13
Dep: VG Wgt: 1.00 LBS
DV:

SHIPPING: 9.40
SPECIAL: 4.49
HANDLING: 0.00
TOTAL: 13.89
0.00

Svc: STANDARD OVERNIGHT DSR
TRCK: 6626 4648 6934

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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1650 Arch Street
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HAGERSTOWN AIRCRAFT)	Docket No. RCRA-03-2011-0112
SERVICES, INC.,)	
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Respondent.)	
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RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

Exhibit B

**E-mail from Trent Zivkovich, Counsel for Respondent,
to Joyce Howell, Counsel for Complainant**

October 18, 2013

(without original email attachment)

Zivkovich, M. Trent

From: Zivkovich, M. Trent
Sent: Friday, October 18, 2013 9:52 AM
To: howell.joyce@epa.gov
Subject: Hagerstown Aircraft Services, Inc.
Attachments: HAS Supplemental Filing to Region 3 10-18-13.PDF

Joyce,

Welcome back- it's good to have everyone back on board. Please find enclosed a courtesy copy of a supplemental filing sent today to the Regional Judicial Officer transmitting the written report of a follow-up compliance inspection completed by the MDE on September 18th. A hard copy is also being sent to you via FedEx for formal service.

As you will see from the attached compliance report, all compliance problems have been addressed at HAS. My client remains interested in the opportunity to have a telephone or in-person conference with EPA Region 3 to discuss the matter and attempt to resolve the matter once and for all. Please let me know if your client is interested in such a conference.

I look forward to hearing from you.

Sincerely,

Trent

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7 St. Paul Street | Baltimore, MD 21202-1636
tzivkovich@wtplaw.com | <vCard> | www.wtplaw.com
t: 410-347-8778 | f: 410-223-4167 | c: 443-668-6598