

At the time of the inspection, in the Central Accumulation Area, the inspectors observed three, 55-gallon dangerous waste containers that were not marked or labeled with the date accumulation began, the words, “dangerous waste” or “hazardous waste,” or an indication of the major risks associated with the waste, as specified at WAC 173-303-200(1) for accumulating dangerous waste without a permit.

At the time of the inspection, in the Paint Conex Area, the inspectors observed a yellow 5-gallon bucket with duct tape marked “Hazardous 6-9-22” that was not marked or labeled with the words, “dangerous waste” or “hazardous waste,” or an indication of the major risks associated with the waste, as specified at WAC 173-303-200(1) for accumulating dangerous waste without a permit.

At the time of the inspection, in the Stormwater Treatment Area, the inspectors observed a large tote containing more than 55-gallons of dangerous waste that was open, not marked or labeled with the date accumulation began, the words, “dangerous waste” or “hazardous waste,” or an indication of the major risks associated with the waste, as specified at WAC 173-303-200(1) for accumulating dangerous waste without a permit. Facility personnel closed and labeled the tote with the words “Hazardous waste” during the inspection.

b. Failure to Comply with Personnel Training Requirements

The regulation at WAC 173-303-170(3)(a) allows a large quantity generator of dangerous waste to accumulate dangerous waste in containers for less than one hundred ninety days without a permit, provided that they comply with the applicable requirements of WAC 173-303-200. The regulation at WAC 173-303-200(1)(e)(i) and, by reference, WAC 173-303-330(1), a facility owner or operator must provide a program of classroom instruction or on-the-job training for facility personnel. This program must train personnel to perform their duties in a way that ensures the facility’s compliance with WAC Chapter 173-303, must teach facility personnel dangerous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed, must ensure that facility personnel are able to respond effectively to emergencies, and must include the elements set forth in the training plan required in WAC 173-303-330(2). In addition, the generator must keep training records on current personnel until closure of the facility and must keep records on former employees for at least three years from the date the employee last worked at the facility.

During post inspection communication, EPA requested records of training for Chris Gran, Jeffrey Thomas, and Phil Willis. Nichols Brothers Boat Builders was unable to provide records documenting training for these three employees, whose positions required them to manage dangerous wastes. As a result, EPA has determined that Nichols Brothers Boat Builders failed to provide training for these employees, as required by WAC 173-303-200(1)(e)(i) and WAC 173-303-330(1).

c. Failure to Properly Manage Used Oil Containers

The regulation at WAC 173-303-515(6) incorporates by reference 40 C.F.R. Parts 279.20 through 279.24 except 40 C.F.R. Part 279.21. The regulation at 40 C.F.R. Part 279.22(c)(1) requires that containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil.” The regulation at

WAC 173-303-515(6)(a)(i) requires containers to be closed at all times, except when adding or removing materials managed under this section.

At the time of the inspection, in the Central Accumulation Area, the inspectors observed one container of used oil that was open and not labeled or marked with the words "Used Oil," as required at 40 C.F.R. Part 279.22(c)(1).

At the time of the inspection, in the Stormwater Treatment area, the inspectors observed a poly tote labeled as "Used Oil." This poly tote was open at the top and facility personnel closed this container during the inspection as required at WAC 173-303-515(6)(a)(i).

In the Stormwater Treatment Area, the inspectors also observed two 5-gallon containers containing used oil that were open and not labeled or marked with the words "Used Oil," as required at WAC 173-303-515(6)(a)(i) and 40 C.F.R. Part 279.22(c)(1).

d. Failure to Make a Dangerous Waste Determination

The regulation at WAC 173-303-170(1) and, by reference, WAC 173-303-070 requires any person who generates a solid waste must determine if that waste is a dangerous waste at the point of generation.

At the time of inspection, in the Central Accumulation Area, the inspectors observed various wastes in the lined open tub without dangerous waste designation, as required at WAC 173-303-170 and, by reference, WAC 173-303-070(3), any person who generates a solid waste to determine if that waste is a dangerous waste or an extremely hazardous waste.

4. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$5,375. The attached Penalty Calculation Worksheet is incorporated by reference.
5. In signing this Agreement, Respondent: (1) admits that Respondent is subject to RCRA and its implementing regulations; (2) admits that EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein, (3) neither admits nor denies the factual allegations contained herein; (4) consents to the assessment of this penalty; (5) waives the opportunity for a hearing to contest any issue of fact or law set forth herein; (6) waives its right to appeal the Final Order accompanying this Agreement pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b); and (7) consents to electronic service of the filed ESA.
6. Within 30 days of the effective date of this Agreement, Respondent shall pay a civil penalty of \$5,375 for the RCRA violations identified in this Agreement. Payments under this Agreement may be made by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

Respondent must note on the check the title and docket number of this action.

7. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 6 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Xiangyu Chu
U.S. Environmental Protection Agency
Region 10
Chu.xiangyu@epa.gov

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Agreement and Final Order and to execute and legally bind Respondent to it.
9. EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of RCRA, any other federal statute or regulation, or this Agreement.
10. Each party shall bear its own costs and fees, if any.
11. This Agreement and Final Order shall constitute full settlement of the civil claims alleged herein.
12. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state or local income tax purposes.
13. This Agreement is binding on the parties signing below and, in accordance with 40 C.F.R. § 22.31(b), is effective upon filing of the Final Order with the Regional Hearing Clerk for the EPA, Region 10.

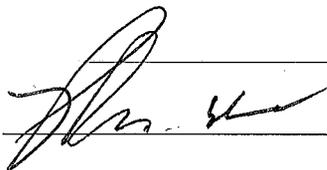
IT IS SO AGREED,

RESPONDENT:

Name (print): PHILLIP WILLIS

Title (print): PAINT SUPERVISOR

Signature: _____



Date: _____

9/16/23

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EPA REGION 10:

Edward J. Kowalski, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10

Date: _____

FINAL ORDER

I hereby ratify the Expedited Settlement Agreement and incorporate it by reference. This Expedited Settlement Agreement and Final Order, as agreed to by the parties, shall be effective immediately upon filing with the Regional Hearing Clerk for the EPA, Region 10. Such filing will conclude this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31.

IT IS SO ORDERED,

Richard Mednick, Regional Judicial Officer
U.S. Environmental Protection Agency, Region 10

Date: _____

Certificate of Service

The undersigned certifies that the original of the attached EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: Nichols Brothers Boat Builders, Inc., Docket No.: RCRA-10-2023-0126 was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered via electronic mail to:

Xiangyu Chu
U.S. Environmental Protection Agency
Region 10
Chu.xiangyu@epa.gov

Philip Willis
5400 South Cameron Road
Freeland, WA 98249
philw@nicholsboats.com

DATED this _____ day of _____, 2023.

Regional Hearing Clerk
EPA Region 10