

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219**

Received by  
EPA Region 7  
Hearing Clerk

**In the Matter of:** )  
 )  
McKee Auto Center, Inc., ) **Docket No. RCRA-07-2021-0083**  
 )  
 **Respondent** )  
 )  
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**CONSENT AGREEMENT AND FINAL ORDER**

**PRELIMINARY STATEMENT**

1. The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and McKee Auto Center, Inc. (“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**

2. This administrative action is being conducted pursuant to Section 3008(a) and (c) 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 (c) and in accordance with the Consolidated Rules of Practice.

3. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that there has been a violation of Section 3001 of RCRA, 42 U.S.C §§ 6921, and the standards for identification and listing of hazardous waste and disposal of waste (40 C.F.R. Part 262.11).

**Parties**

4. Complainant is the Chief of the Chemical Branch, Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

5. Respondent is McKee Auto Center, Inc., is the recent purchaser, and current owner of the property located at 4141 E. 14th Street in Des Moines, Iowa (Facility). Respondent is a corporation authorized to operate under the laws of Iowa.

### **Statutory and Regulatory Framework**

6. 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.

7. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 3001, 3002, and 3005 of RCRA, 42 U.S.C. §§ 6921, 6922, 6925, 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. Part 262.

8. 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.

9. 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.

10. 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. Section 3005(a) states that after such regulations take effect the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit.

11. Section 1004(15) of RCRA, 42 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.

12. 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. A facility may consist of several treatment, storage, or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

13. The regulation at 40 C.F.R. § 260.10 defines “storage” as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

14. The regulation at 40 C.F.R. § 260.10 defines “disposal” as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

15. The regulation at 40 C.F.R. § 260.10 defines “owner” as the person who owns a facility or part of a facility.

16. The regulation at 40 C.F.R. § 260.10 defines “operator” as the person responsible for the overall operation of a facility.

17. Pursuant to 40 C.F.R. § 261.2, a “solid waste” is any discarded material that is not excluded under 40 C.F.R. § 261.4(a).

18. Pursuant to 40 C.F.R. § 261.3, a “hazardous waste” is a solid waste, as defined in § 261.2, if it exhibits any of the characteristics of hazardous waste identified in subpart C of Part 261.

19. 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.

20. The regulation at 40 C.F.R. § 260.10 defines “large quantity generator” as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste per month or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).

21. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), whenever on the basis of any information the EPA determines that any person has violated or is in violation of any requirement of RCRA, the 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.

22. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorize a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$81,540 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 12, 2022. 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), 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) for violation of the compliance actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

### **General Factual Background**

23. Respondent is a corporation and authorized to conduct business within the State of Iowa. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

24. Respondent owns the Facility located at 4141 E. 14th Street, Des Moines, Iowa. This Facility was formerly operated by Chrome Reflections (former operator) under the ownership of Imperial Properties, Inc. (former owner). Chrome Reflections ran a chrome plating operation at this Facility. As a result of legal action by the City of Des Moines, Chrome Reflections was ordered to discontinue operations in 2011. Chemicals and wastes were left at the property by Chrome Reflections when operations were discontinued. Imperial Properties worked with the City of Des Moines to remove some of the waste and materials that were left behind by the operator. On March 5, 2021, McKee Auto Center, Inc. purchased the Facility. This action covers the sampling, disposal, and remediation of wastes/materials that remain at the Facility.

25. On or about November 3, 2017, Imperial Properties notified the EPA, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, as a Large Quantity Generator (LQG) of hazardous waste. Respondent has been assigned the following RCRA ID Number: IAR000521112.

26. On or about April 15, 2019, an EPA inspector conducted a RCRA Compliance Evaluation Inspection (hereinafter “the inspection”) of the hazardous waste management practices at the Facility. Based on a review of the inspection report, the information provided during the inspection by the owners of the Facility and the City of Des Moines, and a subsequent site visit on September 14, 2020, it was determined that the Facility was no longer operating, that the former operator no longer had access to the Facility, and uncontainerized and various sized containers of waste remained in the Facility.

27. At the time of the most recent EPA inspection and site visit, the following wastes and/or materials, among others, had been discarded by the operator and were present in the Facility:

- (a) More than 75 spent fluorescent lamps throughout the building;
- (b) Sand blaster media in metal finishing area;
- (c) Wastes inside wet/dry vacuum and floor sweeping unit in the metal finishing area;

- (d) Approximately 85 containers of chemicals/paints, ranging from one quart to 5 gallons, in the north storage rooms;
- (e) Chemical reactor tank residue;
- (f) Heavily corroded black steel 55-gallon container containing chemicals and located in the South shelving unit area;
- (g) Open top plastic 55-gallon container containing liquid substance in the South shelving unit area;
- (h) Liquids and solids remaining in the plating tank lines;
- (i) At least 50 aerosol cans;
- (j) Spent plating filters at several locations inside of the plating room;
- (k) Spent lead anodes at several locations inside of the plating room;
- (l) Unknown white powder spill, approximately 5 gallons, inside one of the storage rooms located north of, and adjacent to, the plating room;
- (m) Several computer monitors;
- (n) Waste was observed inside of a small rusty parts washer located inside of the plating room; and
- (o) PCB containing material.

These are solid and/or hazardous wastes as defined at 40 C.F.R. § 261.2 and 261.3.

### **Violations**

28. Complainant hereby states and alleges that violations of RCRA and the federal regulations promulgated thereunder have occurred at the Facility as follows:

#### **Count 1**

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

29. Complainant hereby incorporates the allegations contained in Paragraphs 23 through 27 above, as if fully set forth herein.

30. Pursuant to 40 C.F.R. § 262.11, a generator of solid waste, as defined in 40 C.F.R. §§ 260.10 and 261.2, must determine if that waste is a hazardous waste using methods prescribed in the regulations.

31. At the time of the inspection, it was determined that waste listed in Paragraph 27 above was some of the waste being stored at the Facility.

32. At all relevant times, hazardous waste determinations had not been conducted on any of the solid waste streams described in Paragraph 27 above.

33. Respondent's failure to perform a hazardous waste determination on each of the above-referenced solid waste streams is a violation of 40 C.F.R. § 262.11 and therefore a violation of Section 3001 of RCRA, 42 U.S.C §§ 6921.

### **CONSENT AGREEMENT**

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

35. Respondent and EPA consent to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the performance of the compliance actions described below.

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

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

38. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address for Respondent's counsel: *christopher.talcott@dentons.com*.

### Stipulated Penalties

39. In the event Respondent fails to comply with any of the compliance tasks identified in the Compliance Action section below or fails to comply with the Final Order of this CAFO, Respondent shall, for each such failure, be liable for a stipulated penalty in the amount of up to Two Hundred Fifty Dollars (\$250.00) for each day from the first to the fifteenth day, Five Hundred Dollars (\$500.00) for each day from the sixteenth to the thirtieth day, and Seven Hundred Fifty Dollars (\$750.00) for each day thereafter that the failure continues, provided such penalties shall not accrue until Respondent has received notice of noncompliance pursuant to paragraph 41 and fails to cure such failure within such thirty (30) day period.

40. Upon failure to cure within the applicable cure period, all penalties shall begin to accrue upon expiration of the thirty (30) day compliance period pursuant to paragraph 41 and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.

41. All penalties owed to EPA under this Section shall begin to accrue thirty (30) days after receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due if such noncompliance is not cured within thirty (30) days (cure period). Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.

42. Each penalty payment shall identify Respondents 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>.

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

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
[R7\\_Hearing\\_Clerk\\_Filings@epa.gov](mailto:R7_Hearing_Clerk_Filings@epa.gov); and

Jennifer Trotter, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
*Trotter.jennifer@epa.gov*

43. The payment of stipulated penalties shall not alter in any way Respondent's obligations to complete the performance required hereunder.

44. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Agreement and Final Order.

45. Notwithstanding any other provision of this Section, EPA may in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Agreement and Final Order.

46. The payment of stipulated penalties specified in this Consent Agreement and Final Order shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

### **Compliance Actions**

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

48. **Selection of Contractor and Project Manager,**

- (a) Contractor selection. Respondent has submitted a contractor selection to EPA, and the EPA is reviewing submitted documentation for Eco Source, LLC as Respondent's Contractor to carry out all activities set forth herein. All work performed under this Final Order shall be under the direction and supervision of a professional engineer licensed in the state of Iowa or other Iowa licensed environmental professional with expertise in environmental investigations and remediation. EPA will notify Respondent/Respondent's contractor if additional information is needed to approve contractor selection.
- (b) Project Manager selection. Respondent has submitted a project manager selection to EPA, and EPA is reviewing submitted documentation for Darren Fife as Respondent's Project Manager. To the greatest extent possible, Respondent's Project Manager shall be readily available during all work to be performed hereunder. Respondent's Project Manager shall have the authority to act on behalf of Respondent. EPA will notify



Respondent/Respondent's contractor if additional information is needed to approve Project Manager selection.

- (c) Other Contractors and Subcontractors. Respondent shall notify the EPA's Project Manager identified in Paragraph 60 below of the name and qualifications of any other Contractors or Subcontractors retained to perform work under this CA/FO at least seven (7) days prior to commencement of such work, for EPA approval.
- (d) Disapproval of Project Manager or Contractor. EPA retains the right to approve or disapprove the selected Contractors, Subcontractors, or Project Manager retained by Respondent. If the EPA disapproves of any Contractors, Subcontractors, or Project Managers, Respondent shall retain a different Contractor, Subcontractor, or Project Manager, and notify the EPA of the new Contractor, Subcontractor, or Project Manager's name and qualifications within seven (7) business days following receipt of the EPA's disapproval. If the EPA still disapproves of the selected Contractor, Subcontractor, or Project Manager, Respondent shall propose a different Contractor, Subcontractor and/or Project Manager until all are approved by the EPA's representative identified in Paragraph 60 below.

49. **Immediate cleanup of spilled materials**. Respondent shall immediately containerize the released white powder that was observed on the Facility floor during the September 14, 2020 Facility visit. If any other releases are discovered, these releases must also be addressed. Within seven (7) days of the effective date of this Order, Respondent shall provide photographic documentation to the EPA Project Manager listed in Paragraph 60 that the release has been cleaned up and that the wastes have been containerized. EPA is currently reviewing documentation submitted by Respondent/Respondent's contractor and will provide approval, disapproval, or comments if additional information/revisions are needed.

50. **Immediate use of waste storage containers in good condition**. Respondent shall immediately overpack or transfer the contents of the 55-gallon metal drum that was observed in poor condition at the Facility during the September 14, 2020 visit. Within seven (7) days of the effective date of this Order, Respondent shall provide documentation (e.g., written statements, photographs, etc.) to the EPA's Project Manager identified in Paragraph 60 below that the wastes are being properly managed in accordance with RCRA. EPA is currently reviewing documentation submitted by Respondent/Respondent's contractor and will provide approval, disapproval, or comments if additional information/revisions are needed.

51. **Separation of incompatibles**. Within fourteen (14) days of the effective date of this Order, Respondent shall ensure that any storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments is separated from the other materials or protected from them by means of a dike, berm, wall, or other device, as required by 40 C.F.R. § 262.17(a)(1)(vii)(c). Furthermore, Respondent shall not place incompatible wastes, or incompatible waste and materials, in the same container; or place hazardous waste in an unwashed container that

previously held an incompatible waste or material, in accordance with 40 C.F.R. § 262.17(a)(1)(vii). Within twenty-one (21) days of the effective date of this Order, Respondent shall provide documentation (e.g., written statements, photographs, etc.) to the EPA's Project Manager identified in Paragraph 60 below that these incompatible wastes and other materials have been separated.

52. **Proper management of waste in containers.** Within fourteen (14) days of the effective date of this Order, Respondent shall ensure that all containers holding hazardous waste are closed as required by 40 C.F.R. § 262.17(a)(1)(iv) and in good condition, as required by 40 C.F.R. § 262.17(a)(1)(ii). Respondent shall use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired, pursuant to 40 C.F.R. § 262.17(a)(1)(iii). Within twenty-one (21) days of the effective date of this Order, Respondent shall provide documentation (e.g., written statements, photographs, etc.) to the EPA's Project Manager identified in Paragraph 60 below that all containers holding hazardous wastes are in good condition.

53. **Conduct Complete Inventory of All Containers, Drums, Totes, Carboys, Tanks, Vats.**

- (a) EPA acknowledges that Respondent has submitted, for EPA approval, written inventory and photographs of all containers, drums, totes, carboys, vats, and tanks, which includes a notation regarding the size of the container, its contents and quantity thereof. EPA is currently reviewing documentation submitted by Respondent/Respondent's contractor and will provide approval, disapproval, or comments if additional information/revisions are needed.
- (b) If Respondent claims any of the materials above as a useable and/or saleable product, then Respondent must identify the material, describe the condition of the container, describe the location of the material in the building and provide a photograph. In addition, Respondent must provide written documentation of the product's intended use in the future and the Material Safety Data Sheet (MSDS) or Safety Data Sheet (SDS). Respondent, however, shall refrain from relocating or removing from the Facility any of the materials identified above without approval from the EPA except as allowed by this Order.

54. **Hazardous Waste Inventory and Immediate Removal Plan.** Respondent has submitted, for EPA approval, Respondent's Inventory and Immediate Removal Plan for identifying and shipping all hazardous waste located at the Facility to an appropriate hazardous waste disposal Facility. This includes a Quality Assurance Project Plan (QAPP) and a Health and Safety Plan (HASP) to evaluate and sample wastes present at the Facility as specified below. EPA is currently reviewing documentation submitted by Respondent/Respondent's contractor and will provide approval, disapproval, or comments if additional information/revisions are needed.

- (a) Quality Assurance Project Plan (QAPP). The QAPP shall address quality assurance, quality control, and chain of custody procedures in accordance with “EPA Requirements for Quality Assurance Project Plans” (EPA QA/R-5, EPA/240/B-01/003, March 2001) and “EPA Guidance for Quality Assurance Project Plans” (EPA QA/G-5, EPA/240/R-02/009, December 2002), as well as other such applicable guidance identified by EPA. The QAPP shall describe the procedures that will be used for sampling and analysis of solid waste identified in the Solid Waste Inventory Report for the purpose of conducting hazardous waste determinations in accordance with 40 C.F.R. § 262.11. The QAPP shall describe the proposed sampling procedures that will be employed to ensure that samples are collected and analyzed using EPA-approved protocols. In addition, the QAPP shall describe the number and type of samples to be collected, the method(s) of collection and analysis, and criteria for determining sampling locations.
- (b) Health and Safety Plan (HASP). The HASP, which shall be implemented during field activities, shall be consistent with applicable Occupational Safety and Health Administration (OSHA) regulations. The HASP reviewed by the EPA for the Site Characterization Plan will meet the requirements of this paragraph, except to the extent that 1) non-substantive changes to personnel, contractors, or laboratories identified in the original QAPP require updating; and/or 2) Respondent proposes to alter any sampling type, analytical protocol, or other type of work from what was proposed for the Facility, in which case Respondent must submit any such changes to the EPA for approval.
- (c) Submit for EPA review and approval, all disposal facilities to which Respondent proposes to ship wastes along with each Facility’s applicable permits and/or licenses.

55. **Implementation of the Inventory and Immediate Removal Plan.**

- (a) Within no more than forty-five (45) days of the EPA’s approval of Respondent’s Inventory and Immediate Removal Plan Respondent shall complete all sampling activities necessary for the completion of hazardous waste determinations on all identified solid wastes;
- (b) Within no more than sixty (60) Days of the EPA’s approval of the Inventory and Immediate Removal Plan , Respondent shall complete the hazardous waste determinations on all identified solid wastes identified in the inventory required by Paragraph 53;
- (c) Within no more than fifteen (15) Days after the completion of the hazardous waste determinations, Respondent shall provide a Hazardous

Waste Inventory Report for the EPA's approval that identifies each hazardous waste located at the Facility (including the waste determination, the name of the waste stream, the waste code, amount of waste, type of container, and exact location within the Facility), describes how Respondent arrived at the waste determination for each identified waste (e.g., process knowledge, labeling, field screening, analytical sampling, etc.), identifies the disposal Facility that will receive each waste stream, and includes all data supporting each hazardous waste characterization (including, but not limited to, the sample number for each sample taken and for each hazardous waste determination, any MSDS or SDS utilized for waste determinations, copies of labels or photographs of labels utilized to assist in waste determinations, field logs, field sheets, waste profiles, field screening sampling data, and analytical laboratory data);

- (d) Within no more than seven (7) days after the EPA's approval of the Hazardous Waste Inventory Report, including the hazardous waste determinations made therein, Respondent shall begin shipping hazardous wastes to an approved hazardous waste treatment, storage, and disposal Facility identified pursuant to subparagraph (c) of this paragraph; and
- (e) Respondent shall complete the shipment of all solid and hazardous waste within no more than forty-five (45) Days after the completion of the sampling activities.

56. **Waste Disposal and Waste Disposal Report.** No later than forty-five (45) days after all solid and/or hazardous wastes have been shipped off-site for disposal from the Facility, Respondent shall submit to the EPA's Project Manager identified in Paragraph 60 a Waste Disposal Report. The Waste Disposal Report shall include documentation that all disposal activities are complete and were carried out in accordance with the Inventory and Immediate Removal Plan and the applicable requirements of RCRA, including but not limited to manifest numbers used for hazardous waste shipments (including line numbers), bills of lading or receipts documenting disposal of solid wastes and/or Universal Wastes, and any Land Disposal Restriction (LDR) Notices. If Respondent has not received all confirmations of off-site disposal from the Facility at the time the Waste Disposal Report is due, Respondent shall submit supplemental reports as it receives additional confirmations; however, all supplemental reports shall be submitted to the EPA no later than sixty (60) days after all solid and/or hazardous wastes have been shipped off-site for disposal from the Facility. Respondent shall notify the EPA immediately upon learning that any shipment of solid and/or hazardous waste is being or has been returned to Respondent.

57. **Site Characterization.** Within thirty (30) days after completion of offsite shipment of the wastes identified as part of the inventory required in Paragraphs 53 and 55 above, Respondent shall submit to the EPA's Project Manager identified in Paragraph 60 for review and approval a Site Characterization Work Plan to investigate the extent of contamination of the areas where these wastes were stored and/or where releases of solid and hazardous wastes have potentially 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 offsite migration of waste and provide a plan for decontamination of the building and any surrounding area.

- (a) The Site Characterization Work Plan shall include a schedule for completion of activities including the ultimate clean-up of any contaminated areas. It shall also include:
  - i. a diagram of the Facility and its structures, a narrative and pictorial description of the locations to be sampled, and the materials or media to be sampled;
  - ii. a list of the hazardous constituents for which each sample shall be analyzed, based on the composition of the chemicals that were used and stored at the Facility; and
  - iii. a statement of the action levels proposed for the hazardous constituents described in Subparagraph ii) above that shall indicate whether contamination from hazardous wastes stored at the Facility is present.
- (b) The QAPP shall address quality assurance, quality control, and chain of custody procedures in accordance with “EPA Requirements for Quality Assurance Project Plans” (EPA QA/R-5, EPA/240/B-01/003, March 2001) and “EPA Guidance for Quality Assurance Project Plans” (EPA QA/G-5, EPA/240/R-02/009, December 2002, as well as other such applicable guidance identified by EPA. The QAPP shall describe the procedures that will be used for sampling and analysis of the solid wastes identified in the inventory for the purpose of conducting hazardous waste determinations in accordance with RCRA, including 40 C.F.R. § 262.11. The QAPP shall describe the proposed sampling procedures that will be employed to ensure that samples are collected and analyzed using EPA-approved protocols. In addition, the QAPP shall describe the number and type of samples to be collected, the method(s) of collection and analysis, the criteria for determining sampling locations, and the proposed action levels for the hazardous constituents detected in the samples to be collected (i.e., Regional Screening Levels – <https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables>).
- (c) The HASP will be implemented during field activities. The HASP shall be consistent with applicable Occupational Safety and Health Administration regulations.

58. **Reporting.** Respondent shall provide a written status update by first day of each month on all site activities, including but not limited to all waste characterization, disposal, and site characterization, to the EPA’s Project Manager identified in Paragraph 60 below.

59. **Site Characterization Report.** Within sixty (60) days after Respondent's completion of the field work, Respondent shall provide a Site Characterization Final Report to the EPA's Project Manager identified in Paragraph 60 below. The Site Characterization Final Report is to include the following information:

- (a) a written description of all site characterization activities including dates and times for activities that occurred, or are proposed for any future activities;
- (b) a list and description of any deviations from the Work Plan and/or QAPP;
- (c) photographs taken during site characterization field work which document sample locations, boring cuttings, unusual observations, etc.;
- (d) field notes and forms;
- (e) boring logs (if applicable);
- (f) monitoring well completion logs (if applicable);
- (g) laboratory analytical package;
- (h) maps/figures illustrating sample locations; and
- (i) tables summarizing samples collected and sampling results.

60. **Review of Submittals.** All inventories, plans, and reports 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 inventory/plan/report and may approve the inventory/plan/report, approve the inventory/plan/report with modifications, or disapprove the inventory/plan/report and provide comments to Respondent. If the inventory/plan/report is disapproved with comments, Respondent shall incorporate the EPA's comments and resubmit the inventory/plan/report within fourteen (14) days after receipt of the EPA's comments. If Respondent fails to revise the plan/report in accordance with the EPA's comments, then the 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 the EPA's written approval of the plan. Upon approval of the plan by the 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 schedule contained therein shall be deemed a violation of this Order.

- (a) **The EPA contact and Project Manager** to whom all plans must be submitted is:

Kevin D. Snowden  
U.S. Environmental Protection Agency  
RCRA Section  
Chemical Branch  
Enforcement & Compliance Assurance Division  
11201 Renner Blvd.  
Lenexa, Kansas 66219  
Phone: 913-551-7022  
Email: *snowden.kevin@epa.gov*

- (b) **Additional Work.** As a result of the Site Characterization required in Paragraphs 57 and 59 above, the EPA may determine that certain additional tasks are necessary to achieve the purpose of this Order. These tasks include but are not limited to: expanded investigatory sampling of the air, soil, surface water, and/or groundwater to determine the nature and extent of contamination, 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, the EPA will notify Respondent in writing that Respondent must perform the additional work and will specify the basis and reasons for its determination that the additional work is necessary. Within fifteen (15) days after the receipt of such request, Respondent may request a meeting with the EPA to discuss the additional work. Within thirty (30) days after notification of the need for additional work, or according to an alternative schedule agreed to by the parties, Respondent shall submit a work plan for such additional work to the EPA. The plan will be reviewed by the EPA in accordance with the procedures set forth herein. Upon approval by the EPA, Respondent 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 Respondent under this subparagraph shall be performed in a manner consistent with this Order.
- (c) **Split samples.** Upon request by the EPA, Respondent shall allow the EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing work under this Order. Respondent shall notify the EPA not less than thirty (30) calendar days in advance of any sample collection activity. In addition, the EPA shall have the right to take any additional samples that it deems necessary.
- (d) **Removal Action Report:** Respondent shall submit a final Removal Action Report that details all activities conducted at the site in conjunction with the Order within forty-five (45) days after completion of all activities. This Report shall be submitted to the EPA's Project Manager identified in Paragraph 60. The report shall include, but is not limited to, the following:

- (a) A description of the actions that have been taken to comply with each element of the Order;
- (b) Copies of all results of chemical or physical analyses conducted during this action, including the results of field screening or other “onsite” analyses;
- (c) 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 offsite;
- (d) Copies of certificates of disposal from the selected disposal facilities; and
- (e) Written certification that all hazardous waste leaks and spills have been cleaned up 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.*

- (f) A “responsible official” for purposes of this provision means a president, secretary, treasurer or vice-president of the corporation or legal entity, or any person who performs similar policy or decision-making functions for the corporation or legal entity.

#### **ACCESS TO FACILITY**

61. The EPA and/or its authorized representatives shall have access to the Facility at a reasonable time for the purpose of reviewing the progress of Respondent 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 Consent Agreement and Final Order shall restrict the EPA’s rights under Section 3007 of RCRA, 42 U.S.C. § 6927, or other statutory authority.



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

62. This Consent Agreement and Final Order shall resolve Respondent's liability for all allegations of fact and law and violations alleged in this Consent Agreement and Final Order, upon performance and documentation of the injunctive relief required in this Consent Agreement and Final Order.

63. 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.

64. Respondent certifies that it is scheduled to be in compliance with RCRA, and the requirements herein, upon approved completion of this Consent Agreement and Final Order.

65. 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.

66. Notwithstanding any other provision of this Consent Agreement, if Respondent fails to perform the work as set forth in 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 Sixty-Five Thousand Six Hundred Sixty-Six Dollars (\$65,666) 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.

67. 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.

68. 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.

69. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations that are not addressed herein and to enforce the terms and conditions of this Consent Agreement and Final Order.

70. Nothing contained in 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**

71. 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.

72. 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.

73. 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.

74. 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.

75. 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**

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Date

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Candace Bednar  
Chemical Branch Chief  
Enforcement and Compliance Assurance Division

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Date

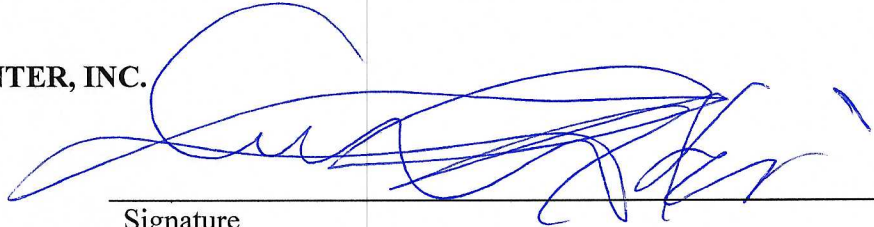
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Jennifer Trotter  
Office of Regional Counsel

RESPONDENT:

**McKEE AUTO CENTER, INC.**

April 7, 2022  
Date



Signature

Anthony Mckee

Printed Name

President

Title

**FINAL ORDER**

Pursuant to Sections 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  
Regional Judicial Officer

\_\_\_\_\_  
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:

*Trotter.Jennifer@epa.gov.*

Copy via Email to Respondent's Counsel:

*christopher.talcott@dentons.com*

Copy via Email to Iowa Department of Natural Resources:

Ed Tormey, Acting Administrator  
Environmental Services Division  
Iowa Department of Natural Resources  
*Ed.tormey@dnr.iowa.gov*

Michael Sullivan, Chief  
Contaminated Sites Section  
Iowa Department of Natural Resources  
*michael.sullivan@dnr.iowa.gov*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signed