

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

IN THE MATTER OF:

L & M Fabrication and Machine, Inc.

Respondent,

**L & M Fabrication and Machine, Inc.
7230 Beth Bath Pike
Bath, PA 18014,**

Facility

) **DOCKET NO.: RCRA-03-2023-0021**
)
)
) **EXPEDITED SETTLEMENT**
) **AGREEMENT AND FINAL ORDER**
)
) **Proceeding under Section**
) **3008(a) and (g) of the Resource**
) **Conservation and Recovery Act, as**
) **amended, 42 U.S.C. § 6928(a) and (g)**
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EXPEDITED SETTLEMENT AGREEMENT

1. The L & M Fabrication and Machine, Inc. (“Respondent”), and the Director, Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) enter into this Expedited Settlement Agreement (“Agreement”) pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act (“RCRA”), as amended, 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* (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)). The Administrator has delegated the authority to enter into this Agreement to the Regional Administrator who, in turn, has delegated it to the Complainant.
2. The U.S. Environmental Protection Agency, Region III (“EPA”) has jurisdiction over this matter pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and 40 C.F.R. §§ 22.1(a)(4) and 22.4 of the Consolidated Rules of Practice.
3. Effective January 30, 1986, the Pennsylvania Hazardous Waste Management Regulation (“PaHWMR”) was authorized by the EPA, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, which thereby authorized the Commonwealth of Pennsylvania to administer a hazardous waste management program in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g. Upon federal authorization, the PaHWMR became requirements of RCRA Subtitle C and enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). *See 51 Fed. Reg.* 1791 (January 15, 1986), *65 Fed. Reg.* 57734 (September 26, 2000), *69 Fed. Reg.* 2674 (January 20, 2004) and *74 Fed. Reg.* 19453 (April 29, 2009). As part of the last PaHWMR revisions authorized by EPA, EPA authorized PaHWMR regulations that incorporate by reference, with certain exceptions, specific provisions of

Title 40 of the Code of Federal Regulations that were in effect as of October 12, 2005, including, among other things, incorporation of 40 C.F.R. § 262.34 (Accumulation Time, which lists the requirements for the generator permit exemption). The Code of Federal Regulations citations used herein, when referring to the federal regulations incorporated by the PaHWMR, are to the 2005 Federal regulations. In other words, 40 C.F.R. § 262.34 (2005) is the currently federally enforceable RCRA regulation applicable in Pennsylvania, despite the fact that EPA re-codified the generator permit exemption, effective on May 30, 2017. *See 81 Fed. Reg. 85732* (November 28, 2016). The federal requirements previously found in 40 C.F.R. § 262.34 are now re-codified at 40 C.F.R. §§ 262.15 - 262.17.

4. On October 14, 2022, EPA sent a letter to the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (“PADEP”), giving prior notice of this enforcement action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. At its facility, located at 7230 Beth Bath Pike, Bath, PA (“Facility”), Respondent owns and operates a steel fabrication and machined parts manufacturing facility. On January 15, 2014, Respondent submitted a notification to PADEP that the Facility was a large quantity generator (“LQG”) of hazardous waste at the Facility, and PADEP assigned RCRA ID No. PAR000510917 to the Facility. Respondent does not have a RCRA permit or interim status for the treatment, storage or disposal of hazardous waste at the Facility.
6. Complainant alleges that, at all times relevant to the allegations described in this Agreement, Respondent was and continues to be a corporation and is therefore a “person,” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 25 Pa. Code § 260a.10, and at all times relevant to the allegations in this Agreement was the “operator” and the “owner” of a “facility,” described in Paragraph 5, above, as the terms “facility,” “owner” and “operator” are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.10.
7. At all times relevant to the allegations described in this Agreement, the Respondent was a “generator” of, and was engaged in the “storage” of “solid wastes” and “hazardous wastes” in “containers” at the Facility such as waste paint materials, including paint thinning, drying, removing, and reducing compounds, with EPA Hazardous Waste Codes D001, D035, F003, and F005, as the terms “generator,” “containers,” “storage,” “solid wastes” and “hazardous wastes” are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.10.
8. On February 15, 2022, EPA representatives conducted a Compliance Evaluation Inspection (“CEI”) at the Facility to determine compliance with the applicable hazardous waste regulations.
9. Based on the observations during the CEI, Complainant alleges and finds that Respondent failed to comply with specific requirements of Subtitle C of RCRA, 42 U.S.C. §§ 6921 et seq., its implementing regulations at 40 C.F.R. Parts 262, 264, 265, and the federally-authorized Commonwealth of Pennsylvania hazardous waste management regulations set forth in the 25 Pa. Code Ch. 260a-266a, 266b, 268a and 270a et seq.
10. Complainant has identified the following three violations at the Facility:

- a. On at least February 15, 2022, Respondent violated 42 U.S.C. § 6925(a) and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), by operating a hazardous waste storage facility without a permit or valid exemption to the permitting requirement. On February 15, 2022, the Respondent failed to meet the following conditions of the generator permit exemption:
- i. The Respondent failed to meet a condition of the generator permit exemption in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), when it failed to store a hazardous waste container at the Facility for 90 days or less. At the time of the CEI, Respondent's hazardous waste accumulation area at the Facility had one container in storage with a start accumulation date marked as 10/29/2021, which was greater than the allowed 90-day accumulation under the exemption requirement. The container was labeled "Hazardous Waste" and Respondent described the container contents as waste paint related material including paint thinning, drying, or reducing compounds with an EPA Hazardous Waste Code D001.
 - ii. The Respondent failed to meet a condition of the generator permit exemption in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i), when it failed to have containers holding hazardous waste closed during storage, except when adding or removing waste. At the time of the CEI, the hazardous waste accumulation area at the Facility had three hazardous waste containers with open bung holes while being stored at Respondent's hazardous waste accumulation area at the Facility while no one was adding or removing waste to/from such hazardous waste containers. Each container was labeled "Hazardous Waste" and Respondent described the container contents as waste paint related material including paint thinning, drying, or reducing compounds with an EPA Hazardous Waste Code D001.
 - iii. The Respondent failed to meet a condition of the generator permit exemption in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(c)(1)(i), when it failed to have containers holding hazardous waste closed during storage, except when it is necessary to add or remove waste. At the time of the CEI, the hazardous waste container located in the satellite accumulation area in the Paint Shop used to collect solvent waste (D001) had an open bung hole while no one was adding or removing waste to/from such hazardous waste container.
 - iv. The Respondent failed to meet a condition of the generator permit exemption in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(c)(1)(ii), when it failed to mark two containers in the satellite accumulation area of the Paint Shop with the words "Hazardous Waste" or with other words that identify the contents of the containers. At the time of the CEI, the hazardous waste containers used to store solvent waste and waste solvent rags (D001), located in the satellite accumulation area in the Paint Shop, were not marked or labeled as "hazardous waste" and had no other

marking indicating the contents of such containers.

- b. On at least February 15, 2022, the Respondent violated 25 Pa. Code 264a.1, which incorporates by reference 40 CFR 264.173(a), when it failed to have containers holding hazardous waste closed during storage, except when adding or removing waste. At the time of the CEI, the hazardous waste accumulation area at the Facility had three hazardous waste containers with open bung holes while being stored at Respondent's hazardous waste accumulation area at the Facility while no one was adding or removing waste to/from such hazardous waste containers. Each container was labeled "Hazardous Waste" and Respondent described the container contents as waste paint related material including paint thinning, drying, or reducing compounds with an EPA Hazardous Waste Code D001.
 - c. On at least February 15, 2022, the Respondent violated 25 Pa. Code 264a.1, which incorporates by reference 40 CFR 264.173(a), when it failed to have containers holding hazardous waste closed during storage, except when it is necessary to add or remove waste. At the time of the CEI, the hazardous waste container located in the satellite accumulation area in the Paint Shop used to collect solvent waste (D001) had an open bung hole while no one was adding or removing waste to/from such hazardous waste container.
11. Complainant and Respondent agree that settlement of this matter for a total penalty of **THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$3,750.00)** is in the public interest. In calculating this amount, Complainant considered the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and with specific reference to EPA's October 1990 RCRA Civil Penalty Policy, as revised in June 2003 ("RCRA Penalty Policy"), and the 2021 RCRA Expedited Settlement Agreement Pilot.
12. Respondent agrees that, within 30 days of the effective date of this Agreement, Respondent shall make a payment of **THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$3,750.00)** by one of four methods: 1) electronic funds transfer ("EFT"), 2) Automated Clearinghouse, 3) Pay.gov, or 4) a cashier's check or certified check made out to "**United States Treasury**" with the case name, address and docket number of this Agreement (RCRA-03-2023-0021), for the amount specified above:
- a. Payment of the penalty amount by EFT:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: Environmental Protection Agency
 - b. Payment of the penalty amount by Automated Clearinghouse ("ACH"):

U.S. Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22- Checking

Physical Location of the U.S. Treasury Facility
5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

c. Payments made through Pay.gov:

Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments. Follow these steps to make a payment:

- (1) You **DO NOT** need a user name and password or account.
- (2) Enter **SFO 1.1** in the form search box on the top left side of the screen.
- (3) Open the form and follow the on-screen instructions.
- (4) Select your method of payment from the "Type of Payment" drop down menu.
- (5) Based on your selection, the corresponding line will open and no longer be shaded grey.
- (6) Enter the docket number of this Agreement into the field.

d. Payment of the penalty amount by regular U.S. Postal Service shall be sent via certified mail to:

U.S. Environmental Protection Agency
P.O. Box - Cincinnati Finance Center Box 979078
St. Louis, MO 63197-9000

e. Payment of the penalty amount by overnight mail (FedEx or other non-U.S. Postal Service express mail) shall be sent to:

U.S. Environmental Protection Agency
Government Lock Box - Cincinnati Finance Center Box 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

f. A list of the payment methods is also provided at this website <https://www.epa.gov/financial/makepayment>.

13. Within 24 hours of payment, Respondent shall also send proof of payment (a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer), by electronic mail to:

Stephen Forostiak, Environmental Scientist (3ED22)
U.S. EPA, Region III
forostiak.stephen@epa.gov

and

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
R3_Hearing_Clerk@epa.gov

14. In signing this Agreement, Respondent: admits the jurisdictional allegations in this Agreement; neither admits nor denies the specific factual allegations in this Agreement, except as provided in the jurisdictional admission above; agrees not to contest EPA's jurisdiction with respect to the execution of this Agreement, the issuance of the attached Final Order, or the enforcement the Agreement; expressly waives its right to a hearing on any issue of law or fact in this Agreement and any right to appeal the accompanying Final Order; consents to the issuance of the Agreement and agrees to comply with its terms; agrees to bear its own costs and attorney's fees; and agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
15. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that (1) the alleged violations have been corrected, and (2) any documentation or information provided to EPA was true and accurate.
16. This Agreement and the attached Final Order constitute a settlement by EPA of its claims for civil penalties for the violations alleged in this Agreement.
17. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Sections 22.18(c) and 22.31(a) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the RCRA, the RCRA regulations promulgated, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Agreement, following its filing with the Regional Hearing Clerk.
18. Late payment of the agreed upon penalty may subject Respondent to interest, administrative costs and late payment penalties in accordance with 40 C.F.R. § 13.11.
19. This Agreement is effective upon filing, in accordance with 40 C.F.R. § 22.31(b).

20. The undersigned representative certifies that she/he is fully authorized to execute this Agreement and to legally bind L & M Fabrication and Machine, Inc.
21. As permitted under 40 CFR § 22.6, the Regional Hearing Clerk will serve copies of this Agreement and Final Order by e-mail to the parties at the following valid e-mail addresses: *Forostiak.stephen@epa.gov* (for Complainant), and *Alack@lmfab.com* (for Respondent).
22. By signing this Agreement, Respondent acknowledges that this Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

For Respondent: L & M Fabrication and Machine, Inc.

Date: *05-19-2023*

By: *Angela Lack Kopchak, pres*
Angela Lack Kopchak,
President

For Complainant: U.S. Environmental Protection Agency, Region III

After reviewing the Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: _____

By: _____
[Digital Signature and Date]

Karen Melvin, Director
Enforcement & Compliance Assurance Division

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

IN THE MATTER OF:

L & M Fabrication and Machine, Inc.

Respondent,

**L & M Fabrication and Machine, Inc.
7230 Beth Bath Pike
Bath, PA 18014,**

Facility

DOCKET NO.: RCRA-03-2023-0021

**EXPEDITED SETTLEMENT
AGREEMENT AND FINAL ORDER**

**Proceeding under Section
3008(a) and (g) of the Resource
Conservation and Recovery Act, as
amended, 42 U.S.C. § 6928(a) and (g)**

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency - Region III, and Respondent, L & M Fabrication and Machine, Inc., have executed a document entitled "Expedited Settlement Agreement," which I hereby ratify as a Consent Agreement in accordance with 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 C.F.R. Part 22, (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Expedited Settlement Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

Based upon the representations of the parties in the attached Expedited Settlement Agreement, the penalty agreed to therein took into account the statutory factors set forth in Section 3008(a)(3) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(3), and with specific reference to EPA's October 1990 RCRA Civil Penalty Policy, as revised in June 2003 ("RCRA Penalty Policy"), and the 2021 RCRA Expedited Settlement Agreement Pilot.

NOW, THEREFORE, PURSUANT TO 3008(a) and (g) of RCRA, as amended, 42 U.S.C. § 6928(a) and (g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, IT IS HEREBY ORDERED that Respondent pay a civil penalty in the amount of **THREE THOUSAND SWEVEN HUNDRED AND FIFTY DOLLARS (\$3,750.00)**, in accordance with the payment provisions set forth in the Expedited Settlement Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order 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 the law. This Final Order resolves only those causes of action alleged in the Expedited Settlement Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable

provisions of Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6921 et seq., and the regulations promulgated thereunder.

The effective date of the foregoing Expedited Settlement Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: _____

By: _____
[Digital Signature and Date]
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

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

IN THE MATTER OF:

L & M Fabrication and Machine, Inc.

Respondent,

**L & M Fabrication and Machine, Inc.
7230 Beth Bath Pike
Bath, PA 18014,**

Facility

DOCKET NO.: RCRA-03-2023-0021

**EXPEDITED SETTLEMENT
AGREEMENT AND FINAL ORDER**

**Proceeding under Section
3008(a) and (g) of the Resource
Conservation and Recovery Act, as
amended, 42 U.S.C. § 6928(a) and (g)**

CERTIFICATE OF SERVICE

I certify that the foregoing *Consent Agreement and Final Order* was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the *Consent Agreement and Final Order*. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Angela Lack Kopchak, President
L&M Fabrication & Machine, Inc.
Alack@lmfab.com

Stephen Forostiak
Environmental Scientist
U.S. EPA, Region III
Forostiak.stephen@epa.gov

[Digital Signature and Date]
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III