

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

IN THE MATTER OF )

Pick-N-Pull Auto Dismantlers, )  
Kansas City, LLC )

Respondent. )

Proceedings under Section 309(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g), )  
and Section 3008(a) and (g) of the )  
Resource Conservation and Recovery Act )  
as amended, 42 U.S.C. § 6928(a) and (g) )

**CONSENT AGREEMENT**  
**AND FINAL ORDER**

Docket Nos. CWA-07-2017-0463  
RCRA-07-2017-0464

**I. PRELIMINARY STATEMENT**

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

**II. ALLEGATIONS**

**A. Jurisdiction**

2. This administrative action is being conducted under the authority vested in the Administrator of the EPA, pursuant to Section 309(g) of the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act or CWA), 33 U.S.C. § 1319(g), Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

3. Under this Consent Agreement and Final Order, EPA alleges that Respondent, a subsidiary of Schnitzer Steel Industries, Inc., discharged pollutants into the waters of the United States in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and regulations promulgated thereunder.

4. Under this Consent Agreement and Final Order, EPA alleges that Respondent violated regulations found at Title 28, Article 31 of the Kansas Administrative Regulations (K.A.R.); Title 10, Division 25 of the Missouri Code of State Regulations (C.S.R.); Section 3005 of RCRA, 42 U.S.C. § 6925; and regulations promulgated thereunder.

### **B. Parties**

5. The Complainant is represented herein by the Director of the Water, Wetlands, and Pesticides Division of EPA, Region 7, as duly delegated by the Administrator of EPA; and by the Branch Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of EPA, Region 7, as duly delegated by the Administrator of EPA.

6. Respondent is and was at all relevant times a limited liability company under the laws of the state of Delaware and is and was at all relevant times authorized to conduct business in the states of Missouri and Kansas.

### **C. Statutory and Regulatory Framework**

#### **CWA**

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

8. The CWA prohibits the “discharge” of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. That Section requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of a NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

10. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

11. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

12. 40 C.F.R. § 122.26(b)(14)(vi) defines “stormwater discharge associated with industrial activity” as “the discharge from any conveyance that is used for collecting and

conveying storm water and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities involved in the recycling of materials such as metal scrapyards, salvage yards, and automobile junkyards, including those classified as Standard Industrial Classification (SIC) 5015 and 5093. *See* 40 C.F.R. § 122.26(b)(14)(vi).

13. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the assessment of a civil penalty of not more than \$125,000 for violations of Section 301 of the CWA or conditions or limitations in a permit issued pursuant to Section 402 of the CWA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment 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 \$267,415 for violations that occur after November 2, 2015 where the penalty is assessed after January 15, 2018.

14. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Missouri Department of Natural Resources (MDNR) is the state agency with the authority to administer the federal NPDES program in Missouri, and the Kansas Department of Health and Environment (KDHE) is the state agency with the authority to administer the federal NPDES program in Kansas. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

#### RCRA

15. The State of Missouri has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and has adopted by reference the federal regulations cited herein at pertinent parts of Title 10, Division 25 of the Missouri Code of State Regulations (10 C.S.R. 25). The regulations determining whether a waste is a solid and/or hazardous waste are set forth at 10 C.S.R. 25-4.261, which incorporate by reference the regulations at 40 C.F.R. Part 261.

16. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (K.A.R. 28-31).

17. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized state program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance, or compliance within a specified time period, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). In the case of a violation of a hazardous waste program pursuant to Section

3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order.

18. The States of Missouri and Kansas have been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

19. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment 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 \$72,718 per day for violations that occur after November 2, 2015 where the penalty is assessed after January 15, 2018.

#### **D. EPA's General Factual Allegations**

20. Complainant hereby states and alleges the following factual allegations:

21. At all times relevant to this Consent Agreement and Final Order, Respondent operated two automobile salvage facilities operating under the name Pick-N-Pull Auto Dismantlers, Kansas City, LLC located at 8012 East Truman Road, Kansas City, Missouri 64126 (Truman Road Facility), and 1142 S. 12<sup>th</sup> Street, Kansas City, Kansas 66105 (12<sup>th</sup> Street Facility, and collectively with the Truman Road Facility, the Facilities).

22. At times relevant to this Consent Agreement and Final Order, the Truman Road Facility processed approximately 900 vehicles per month, is located on 9.5 acres with two buildings on site, and is staffed by around 27 employees.

23. At times relevant to this Consent Agreement and Final Order, the 12<sup>th</sup> Street Facility processed approximately 600 vehicles per month, is located on 8.5 acres with three buildings on site, and is staffed by around 19 employees.

#### **CWA General Factual Allegations**

24. Respondent is a "person," as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

25. At all relevant times to this Consent Agreement and Final Order, Respondent operated the 12<sup>th</sup> Street Facility and the Truman Road Facility under SIC codes 5015 and/or 5093.

26. Stormwater, snow melt, surface drainage, and runoff water leave Respondent's Truman Road Facility and discharge to the Blue River, located within 100 feet of the Truman Road Facility.

27. Stormwater, snow melt, surface drainage, and runoff water leave Respondent's 12<sup>th</sup> Street Facility and discharge to the Kansas River, located within approximately 500 feet of the 12<sup>th</sup> Street Facility. The runoff and drainage from Respondent's Facilities is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

28. Complainant alleges that stormwater from the Facilities contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

29. Each of Respondent's Facilities has "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(vi), and is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

30. The Blue River and the Kansas River are "waters of the United States" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

31. Complainant alleges that stormwater runoff from Respondent's industrial activities at the Facilities results in the addition of pollutants from a point source to waters of the United States, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

32. Complainant alleges that Respondent's discharge of pollutants associated with an industrial activity at the Facilities, as defined by 40 C.F.R. § 122.26(b)(14)(vi), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

33. MDNR implemented General Permit Number MO-R60A145 (MDNR Permit) for the discharge of stormwater under the NPDES, on November 1, 2011. The Truman Road Facility received authorization under the MDNR Permit in December 2013, and the current permit expires on October 31, 2018.

34. KDHE implemented General Permit Number KS-R000767 (KDHE Permit) for the discharge of stormwater under the NPDES, on November 1, 2011. Respondent notified KDHE of a change in ownership of the 12<sup>th</sup> Street Facility on April 8, 2013. The KDHE Permit was transferred to Respondent on April 23, 2013 and expired on October 31, 2016. Respondent's current KDHE Permit will expire on October 31, 2021.

35. The MDNR Permit and KDHE Permit govern stormwater discharges associated with industrial activities, including automobile salvage yards.

36. Respondent's MDNR Permit and KDHE Permit authorize Respondent to discharge pollutants only from specified point sources, identified in the NPDES permits as one or more "outfalls," to specified waters of the United States, subject to the limitations and conditions set forth in the NPDES permits.

37. Respondent has operated under the MDNR Permit and KDHE Permit at all times relevant to this Complaint.

38. On May 18 and 25, 2016, EPA performed an Industrial Stormwater Compliance Evaluation Inspection of Respondent's Truman Road Facility (Truman Road CWA Inspection) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its MDNR Permit and the CWA. Based on information obtained during the inspection, Respondent was issued a Notice of Potential Violation.

39. On October 19 and 24, 2016, EPA performed an Industrial Stormwater Compliance Evaluation Inspection of Respondent's 12<sup>th</sup> Street Facility (12<sup>th</sup> Street CWA Inspection) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its KDHE Permit and the CWA. Based on information obtained during the inspection, Respondent was issued a Notice of Potential Violation.

40. During these inspections, the EPA inspector reviewed Respondent's available records related to the MDNR Permit and KDHE Permit, and observed the Facilities and the receiving streams to which the Facilities discharge. The EPA inspector issued a Notice of Potential Violations to each Facility following the inspections.

#### **RCRA General Factual Allegations**

41. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

42. Respondent is a "generator" as defined by 40 C.F.R. § 260.10.

43. On June 13, 2017, EPA conducted a RCRA Compliance Evaluation Inspection of Respondent's Truman Road Facility (Truman Road RCRA Inspection) under the authority of Section 3007 of RCRA, 42 U.S.C. § 6927, to evaluate Respondent's compliance with RCRA. Based on information obtained during the inspection, Respondent was issued a Notice of Violation.

44. Respondent's Truman Road Facility operates as a Conditionally Exempt Small Quantity Generator (CESQG) of D001 hazardous waste generating less than 100 kilograms of hazardous waste per month and accumulating less than 100 kilograms of hazardous waste on site. The Truman Road Facility is also a small quantity handler of universal waste (mercury containing equipment and lamps) and a used oil generator.



45. On June 14, 2017, EPA conducted a RCRA Compliance Evaluation Inspection of Respondent's 12<sup>th</sup> Street Facility (12<sup>th</sup> Street RCRA Inspection) under the authority of Section 3007 of RCRA, 42 U.S.C. § 6927, to evaluate Respondent's compliance with RCRA. Based on information obtained during the inspection, Respondent was issued a Notice of Violation.

46. On or about February 24, 2016, Respondent notified the State of Kansas that its 12<sup>th</sup> Street Facility was a Small Quantity Generator (SQG) of D001 hazardous waste pursuant to Section 3010 of RCRA 42 U.S.C. § 6930. SQGs generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste per month. The 12<sup>th</sup> Street Facility was assigned the following EPA ID Number: KSD038299954. At the time of the 12<sup>th</sup> Street RCRA Inspection, however, the EPA inspector determined that the 12<sup>th</sup> Street Facility is a Conditionally Exempt Small Quantity Generator of D001 hazardous waste because it generates less than 100 kilograms of hazardous waste per month and accumulates less than 100 kilograms of hazardous waste on site. The 12<sup>th</sup> Street Facility is also a small quantity handler of universal waste (mercury containing equipment and lamps) and a used oil generator.

#### **E. Allegations of Violation**

47. The factual allegations stated above are herein incorporated by reference.

#### **Alleged CWA Violations**

48. Complainant hereby states and alleges that Respondent has violated the CWA, and federal and state regulations promulgated thereunder as set forth below.

#### ***Truman Road Facility***

##### **Count 1**

#### **Failure to Implement Adequate Control Measures or Take Sufficient Corrective Actions to Improve Control Measures**

49. Part 4 of the "Other Requirements" section of Respondent's MDNR Permit requires permittees to implement certain minimum Best Management Practices (BMPs) at the Truman Road Facility, including, but not limited to, BMPs that: 1) prevent the spillage or loss of fluids, oil, grease, and fuel; 2) provide proper disposal of waste products; 3) store all paint, solvents, petroleum products, and storage containers so they are not exposed to stormwater or prevent commingling of stormwater with container contents; and 4) provide good housekeeping practices to prevent trash from entering into waters of the state.

50. Part 3 of the "Other Requirements" section of the MDNR Permit requires that Respondent's Stormwater Pollution Prevention Plan (SWPPP) include a schedule for monthly inspections to observe and evaluate BMP effectiveness, and requires that any deficiencies found

in the monthly inspections be corrected within seven days. In addition, MDNR must be notified of any deficiencies by letter.

51. At the time of the Truman Road CWA Inspection, the “Interim and Final Effluent Limitations and Monitoring Requirements” in the MDNR Permit required Respondent to conduct quarterly grab samples of stormwater runoff at all outfalls within 60 minutes of discharges occurring as a result of precipitation events of 0.1 inches or greater. Samples were required to be collected for total suspended solids (TSS), aluminum, iron, lead, and oil & grease. The MDNR Permit establishes a daily maximum effluent limitation of 15 mg/L for oil & grease, and a monthly average effluent limitation of 10 mg/L, beginning on February 19, 2016. Permittees are required to conduct benchmark monitoring for the remaining pollutants at least once every quarter. If a sample exceeds the benchmark concentration, permittees must update their SWPPP and BMPs in order to improve existing, or add additional, controls to reduce that pollutant in their stormwater discharge. Failure to evaluate and improve BMPs to address a benchmark value exceedance is a permit violation.

52. Part 4 of the “Benchmarks” section of the MDNR Permit states that the BMPs at the Respondent’s facility should be designed to meet the following daily maximum benchmark concentrations for the pollutants listed below during rainfall events up to a 10-year, 24-hour rain event for each permitted outfall:

Parameter	Benchmark
Total Suspended Solids	100 mg/L*
Aluminum, Total Recoverable	750 µg/L**
Iron, Total Recoverable	1,000 µg/L
Lead, Total Recoverable	151 µg/L

\* Milligrams per liter; \*\* Micrograms per liter

53. Part 3 of the “Benchmarks” section of the MDNR Permit states that failure to evaluate and improve BMPs to address a benchmark value exceedance is a permit violation.

54. Respondent has one permitted outfall, Outfall #1, at the Truman Road Facility. Respondent performed quarterly stormwater discharge monitoring in seven of the eleven quarters between January 1, 2014 and September 30, 2016 when stormwater discharges associated with qualifying storm events occurred during normal business hours. In each of these quarters for which Respondent took stormwater discharge samples, Respondent exceeded multiple benchmarks, as shown in the table below:



Sample Quarter	Benchmark and Effluent Sample Results				
	TSS	Aluminum	Iron	Lead	Oil & Grease
Benchmark/ Limit	Benchmark 100 mg/L	Benchmark 750 µg/L	Benchmark 1,000 µg/L	Benchmark 151 µg/L	Benchmark 15 mg/L & 10mg/L*
1 <sup>st</sup> 2014	NS**	NS	NS	NS	NS
2 <sup>nd</sup> 2014	<b>402***</b>	<b>3,600</b>	<b>7,700</b>	<b>190</b>	23.6
3 <sup>rd</sup> 2014	NS	NS	NS	NS	NS
4 <sup>th</sup> 2014	<b>660</b>	<b>4,960</b>	<b>12,100</b>	<b>263</b>	27.1
1 <sup>st</sup> 2015	<b>492</b>	<b>3,800</b>	<b>6,500</b>	<b>160</b>	14.5
2 <sup>nd</sup> 2015	84	<b>3,500</b>	<b>7,000</b>	97	10.8
3 <sup>rd</sup> 2015	NS	NS	NS	NS	NS
4 <sup>th</sup> 2015	<b>324</b>	<b>6,700</b>	<b>15,300</b>	140	10.6
1 <sup>st</sup> 2016	NS	NS	NS	NS	NS
2 <sup>nd</sup> 2016	<b>840</b>	<b>9,100</b>	<b>14,800</b>	<b>190</b>	<b>32.9</b>
3 <sup>rd</sup> 2016	52	<b>980</b>	<b>1,100</b>	18	<5.0

\* Beginning February 19, 2016, Oil & Grease had a daily maximum effluent limit of 15 mg/L and a monthly average effluent limit of 10 mg/L; only exceedances after that date were effluent violations.

\*\* No Sample, reported as no discharge during regular business hours.

\*\*\* **Bold** indicates an exceedance of the benchmark concentration or limit.

55. Respondent's failure to implement adequate control measures, and to take adequate corrective actions to improve control measures to address benchmark exceedances, is a violation of the MDNR Permit and of the CWA.

56. Section 4.2 of the Truman Road Facility's SWPPP stated that wattles, absorbents, and oil booms shall be used as necessary near the crusher, material storage, and paved crush pad areas, and changed as often as necessary.

57. During the Truman Road CWA Inspection, the EPA inspector found that straw wattles and/or oil booms were not placed near the crusher, as was required in the SWPPP. A straw wattle was observed around the sides of the motor pile, but appeared to have been run over and was not positioned so as to catch runoff.

58. Section 3.2.5 and 4.2 of the Truman Road Facility's SWPPP stated that the crush pad area was located under roofing to minimize rain from coming into contact with potential pollutant sources within the crush pad area. Section 4.3.2 of the SWPPP stated that drip buckets or pans shall be used to capture oils that leak from the crusher during crushing operations.

59. The Truman Road CWA Inspection found two openings in the roof of the crusher building, directly over the crusher, which allowed stormwater to come into contact with the crusher and area around the crusher. The EPA inspector also found that the crusher was dripping fluid from the front end. While drip pans were located under the crusher, they were not in a position that effectively caught the fluid dripping from the crusher.

60. Section 4.1.6 of the Truman Road Facility's SWPPP required that staff promptly clean up oil stains in the customer yard and production area as they are identified and if they are safely accessible.

61. During the Truman Road CWA Inspection, the EPA inspector observed two puddles: one large puddle at the east entrance to the crusher building and a second smaller puddle inside the building near the motor pile south of the crusher, both of which had an oily sheen on their surface, indicating the presence of oil. The EPA inspector also observed oily fluids on the pavement near the puddles and around the crusher, which had not yet been addressed by facility staff.

62. Respondent's failure to implement adequate control measures, and to take adequate corrective actions to improve control measures, is a violation of a condition of its MDNR Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA's implementing regulations.

**Count 2**  
**Oil & Grease Permit Limit Exceedance**

63. The MDNR Permit for the Truman Road Facility establishes a daily maximum effluent limitation of 15 mg/L for oil & grease, and a monthly average effluent limitation of 10 mg/L, beginning on February 19, 2016.

64. For the second quarter of 2016, Respondent sampled its stormwater discharge at the Truman Road Facility and reported 32.9 mg/L of oil & grease.

65. Respondent's exceedance of the daily and monthly effluent limitation for oil & grease is a violation of a condition of its MDNR Permit, and as such, is a violation of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), and EPA's implementing regulations.

***12<sup>th</sup> Street Facility***

**Count 3**  
**Failure to Implement Adequate Control Measures or**  
**Take Sufficient Corrective Actions to Improve Control Measures**

66. With regards to the 12<sup>th</sup> Street Facility in Kansas City, Kansas, Respondent's KDHE Permit requires it to list and describe BMPs in its SWPPP that address the following minimum components, including, but not limited to: good housekeeping requiring the maintenance of areas in a clean and orderly manner, preventative maintenance, and spill prevention and response procedures.

67. BMPs for fluid draining, and parts and vehicle storage, in Section 3.6 of the 12<sup>th</sup> Street Facility's SWPPP stated that proper housekeeping and inspections are to be done daily.

68. Section 3.6 of the 12<sup>th</sup> Street Facility's SWPPP listed as a BMP for parts and vehicle storage that stained asphalt and soil are to be replaced as needed on a daily basis. In addition, Section 4.1.6 of the SWPPP listed as a BMP for good housekeeping that staff must promptly clean up oil stains in the customer yard and production area to help minimize or eliminate pollutants from entering stormwater runoff.

69. During the 12<sup>th</sup> Street CWA Inspection, the EPA inspector observed a substantial amount of fluid stains and unabsorbed fluid puddles on the ground in the customer yard. In addition, the EPA inspector found that sediment along the runoff pathways from the vehicle holding area and customer yard was oily and dark.

70. During the 12<sup>th</sup> Street CWA Inspection, the EPA inspector also observed unabsorbed puddles of fluids in the drain building and a large puddle of fluid less than 20 feet from the stormwater inlet in the holding area which flows to Outfall #1, and eventually discharges to the Kansas River.

71. Section 3.6 of the 12<sup>th</sup> Street Facility's SWPPP listed as a BMP for vehicle crushing that drip pans or buckets must be used to capture oils from the vehicle crusher.

72. The 12<sup>th</sup> Street CWA Inspection found that no buckets or drip pans had been placed below the vehicle crusher to catch fluids. Instead, fluids from the crusher were discharging to a shallow gravel-covered pit below the crusher. The EPA inspector observed significant oil-staining in the gravel pit.

73. Section 4.2, and a BMP for fluid draining in Section 3.6 of the 12<sup>th</sup> Street Facility's SWPPP, stated that drain activities are to be done within covered and impermeable paved areas. Section 3.2.3 of the SWPPP stated that vehicle fluid draining activities are to be done within the covered and paved drain shop of the production building.

74. At the time of the 12<sup>th</sup> Street CWA Inspection, the EPA inspector observed that top fluids were being removed from incoming vehicles in an uncovered and unpaved area outside the drain shop.

75. Section 4.1.2 of the 12<sup>th</sup> Street Facility's SWPPP stated that secondary containment and berms were to be inspected frequently for integrity and repaired promptly if needed. Drain inlet filters, straw wattles, and oil absorbents were to be replaced as needed based on routine visual inspections performed by qualified staff. In addition, the Appendix section of the 12<sup>th</sup> Street Facility's SWPPP stated that drain inlets were to be protected by placing a barrier of clean rock/gravel around straw wattle staked and trenched in place, with an oil absorbing boom

secured to the straw wattle, and an oil pillow placed in a catch basin insert in the center of the drain inlet. The Appendix states that drain inlets must be visually inspected weekly.

76. At the time of the 12<sup>th</sup> Street CWA Inspection, the EPA inspector found that oil booms installed at the stormwater inlet in the parking lot and in the holding yard did not have outer barriers of clean rock/gravel and straw wattle, the oil absorbing booms were not secured, and the inlet filter in the holding area did not have an oil pillow placed inside the catch basin.

77. During the 12<sup>th</sup> Street CWA Inspection, the EPA inspector noted significant fluid stains in the interior of the drain building, and that the concrete berm along the north wall of the drain building was broken and/or missing, and had not been maintained. The inspection also found unidentified dark staining at the base of the north side of the Drain Building, on the adjacent concrete, the north perimeter road, and the north perimeter road ditch. The EPA inspector noted sections of oil boom that had been placed against the base of the wall in the drain building and oil-soaked absorbent material piled up near the wall and on top of the berm and oil booms.

78. Respondent's failure to implement adequate control measures, and to take adequate corrective actions to improve control measures, is a violation of a condition of Respondent's KDHE Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA's implementing regulations.

#### **Count 4**

##### **Inadequate Storm Water Pollution Plan**

79. Part 2.4.2(a) of Respondent's KDHE Permit requires that Respondent's SWPPP include a general location map.

80. The 12<sup>th</sup> Street CWA Inspection found that Respondent's SWPPP for the 12<sup>th</sup> Street Facility did not include a general location map.

81. Part 2.4.2(b) of Respondent's KDHE Permit requires that Respondent's 12<sup>th</sup> Street SWPPP include a site map identifying, among other things, the scale of the map, the name of the first receiving water to which the discharge is directed, areas where spills have occurred and residues remain, the approximate acreage of each stormwater outfall, and the location of stormwater conveyances and area inlets for each outfall.

82. The 12<sup>th</sup> Street CWA Inspection found that the site map in Respondent's SWPPP did not include the scale of the map, and failed to identify the facility's receiving water. Furthermore, the narrative of Section 3.1 of the 12<sup>th</sup> Street SWPPP incorrectly identified the receiving water as the Blue River, when in fact it is the Kansas River. The narrative of Section 3.3 of the SWPPP and Respondent's quarterly stormwater visual inspection reports also stated that there are two outfalls at the 12<sup>th</sup> Street Facility, while the site map identified only one outfall

for the 12<sup>th</sup> Street Facility. Based on these findings, Respondent's site map in the 12<sup>th</sup> Street Facility's SWPPP was inadequate.

83. Respondent's failure to include all required components in its SWPPP is a violation of a condition of Respondent's KDHE Permit, and as such, violates Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA's implementing regulations.

#### **Count 5**

##### **Failure to Conduct and/or Adequately Document Annual Comprehensive Site Evaluations**

84. Part 2.4.4 of the KDHE Permit requires that the 12<sup>th</sup> Street Facility conduct a Comprehensive Site Compliance Evaluation annually and that the results be summarized in a report.

85. At the time of the 12<sup>th</sup> Street CWA Inspection, the EPA inspector requested copies of the facility's annual inspections. The 12<sup>th</sup> Street Facility provided a copy of the annual inspection for 2016, but was unable to provide any documentation of the annual inspections for 2013, 2014, or 2015.

86. Respondent's failure to conduct and/or document annual Comprehensive Site Compliance Evaluations for 2013, 2014, and 2015 is a violation of a condition of Respondent's KDHE Permit, and as such, is a violation of 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA's implementing regulations.

#### **Count 6**

##### **Failure to Properly Conduct Visual Examination of Stormwater**

87. Part 2.4.5(a) of Respondent's KDHE Permit requires that Respondent conduct and document periodic visual examinations of stormwater quality. The frequency is to be stated in the SWPPP, but at a minimum once per year.

88. Section 4.1.7, Item 2, and Section 5.1 of Respondent's 12<sup>th</sup> Street Facility SWPPP required Respondent to conduct and document Monthly Visual Discharge Observations and Monthly Wet Inspections.

89. Part 2.4.5(b), footnote 2, of Respondent's KDHE Permit states that Respondent should refer to "NPDES Storm Water Sampling Guidance Document, EPA 833-B-92-001" and/or the "EPA Industrial Stormwater Monitoring and Sampling Guide, EPA 832-B-09-003" for sampling methods and procedures.

90. Appendix A-8 of "NPDES Storm Water Sampling Guidance Document, EPA 833-B-92-001" states that "[a]ll samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches and at least 72 hours from the previously measurable (greater



than 0.1 inch rainfall) storm event.” Chapter 3, page 37, of the Guidance Document states that grab samples “must be obtained during the first 30 minutes of a discharge.”

91. Section 2.5 of “EPA Industrial Stormwater Monitoring and Sampling Guide, EPA 832-B-09-003” states that “[a]t least 72 hours must have elapsed since the previous measurable storm event (unless you are able to document that less than a 72-hour interval is representative for local storm events during the sampling period, or if you are monitoring snowmelt...)” Table 2 of the Sampling Guide states that water samples at industrial facilities must be collected during the first 30 minutes of discharge.

92. The EPA inspector requested copies of visual examinations conducted between 2013 and 2016. He was provided with copies of visual inspections for July and September 2015, and February, April, and May 2016. Respondent’s Quarterly Stormwater Visual Inspection Sheet stated that there “[m]ust be at least 72 hours since the last storm event and the inspection should be performed within 30 minutes of an actual discharge from a storm event.”

93. The 12th Street CWA Inspection found that sampling procedures were not followed in four of the five months reviewed by the EPA inspector. In April and May of 2016, and September 2015, the visual inspection sheets show that samples were collected less than 72 hours from the previous event. In July 2015, the visual inspection sheet indicates that the sample was collected more than nine hours after the storm event began.

94. Respondent’s failure to properly conduct visual examinations of stormwater quality is a violation of a condition of Respondent’s KDHE Permit, and as such, is a violation of 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA’s implementing regulations.

#### **Count 7**

##### **Failure to Conduct or Adequately Document Routine Inspections**

95. Part 2.4.3(d) of the KDHE Permit requires the 12<sup>th</sup> Street Facility to conduct and document periodic inspections. The frequency is to be stated in the SWPPP, but at a minimum quarterly inspections are to be performed.

96. Part 3.1 of the KDHE Permit requires Respondent to maintain records of all inspections conducted on site or in a readily accessible location for at least three years.

97. Section 4.1.7 of the 12<sup>th</sup> Street SWPPP required eight different types of inspections to be conducted at various intervals, including: 1) Daily Rain Observations; 2) Monthly Visual Discharge Observations; 3) Monthly Visual Non-Stormwater Discharge Observations; 4) Weekly Baseline BMP Facility Inspections; 5) Daily Housekeeping Inspections of the customer yard and 6) Daily Housekeeping Inspections of the production areas; 7) Annual Inspections of the facility perimeter; and 8) Bi-annual Inspections of the stormwater conveyance system and related BMPs.



98. At the time of the 12<sup>th</sup> Street CWA Inspection, the EPA inspector requested copies of inspections conducted between 2013 and 2016; however, Respondent was only able to provide records from September 2015 to the date of the 12<sup>th</sup> Street CWA Inspection in October 2016.

99. Respondent's failure to maintain records of at least quarterly inspections for three years on site or at an easily accessible location is a violation of a condition of Respondent's KDHE Permit, and as such, is a violation of 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA's implementing regulations.

**Alleged RCRA Violations**

100. Complainant hereby states and alleges that Respondent has violated RCRA, and federal and state regulations promulgated thereunder as set forth below.

***Truman Road Facility***

**Count 8**

**Failure to Properly Manage Used Oil**

***Failure to Properly Label Used Oil Containers***

101. The regulation at 40 C.F.R. § 279.22(c), incorporated by 10 C.S.R. 25-11.279(1), requires that containers and aboveground tanks used to store used oil at generator facilities be labeled or marked clearly with the words "Used Oil."

102. At the time of the June 13, 2017, Truman Road RCRA Inspection, the following containers of used oil were not labeled or clearly marked with the words "Used Oil:"

- a. One 5-gallon pail of used oil located at the crusher shop;
- b. One 12-gallon pail of used oil at the drain shop ( $\frac{3}{4}$  full);
- c. One 4-gallon pail of used oil at the drain shop ( $\frac{1}{4}$  full);
- d. One 5-gallon pail of used oil at the drain shop ( $\frac{1}{4}$  full);
- e. One 5-gallon pail of used oil at the drain shop (less than one gallon full); and
- f. One 5-gallon pail storing seven used oil filters and at least two inches of used oil at the drain shop.

103. Respondent's failure to label containers used to store used oil at its Truman Road Facility constitutes a violation of 40 C.F.R. § 279.22(c) and 10 C.S.R. 25-11.279(1).

***Failure to Properly Manage Used Oil Releases***

104. The regulation at 40 C.F.R. § 279.22(d)(3), incorporated by 10 C.S.R. 25-11.279(1), requires that, upon detection of a release of used oil to the environment that is not subject to the

requirements of 40 C.F.R. Part 280, Subpart F, a generator must clean up and properly manage the released used oil and other materials.

105. Respondent generates approximately 500 gallons of used oil (including transmission and brake fluids) per week from automotive fluid draining activities at the Truman Road Facility.

106. At the time of the Truman Road RCRA Inspection, the EPA inspector observed one 4 by 6-foot area of used oil on the concrete ground between the crusher shop and the crushed vehicle storage area.

107. Respondent's failure to clean up and properly manage the used oil spill documented at the time of the Truman Road RCRA Inspection constitutes a violation of 40 C.F.R. § 279.22(d)(3) and 10 C.S.R. 25-11.279(1).

**Count 9**  
**Failure to Properly Manage Universal Waste**

*Failure to Demonstrate the Length of Time Universal Waste has Accumulated*

108. The regulation at 40 C.F.R. § 273.15(c), incorporated by 10 C.S.R. 25-16.273(1), states that a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

109. Respondent generates approximately one 5-gallon pail of mercury switches per month from automotive salvaging activities.

110. At the time of the Truman Road RCRA Inspection, Respondent was unable to demonstrate the length of time of accumulation of two crates of mercury switches at the Truman Road Facility.

111. Respondent's failure to demonstrate the length of time of universal waste accumulation for the accumulated mercury switches constitutes a violation of 40 C.F.R. § 273.15(c) and 10 C.S.R. 25-16.273(1).

*Failure to Properly Store Mercury-Containing Equipment*

112. The regulation at 40 C.F.R. § 273.4, incorporated by 10 C.S.R. 25-16.273(1), states that mercury-containing equipment is universal waste under 40 C.F.R. Part 273 except in circumstances not relevant to this Consent Agreement and Final Order.

113. The regulation at 40 C.F.R. § 273.13(c), incorporated by 10 C.S.R. 25-16.273(1), states that small quantity handlers of universal waste must manage universal waste mercury-

containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment. Mercury-containing equipment must be placed in a closed container that is structurally sound and reasonably designed to prevent the escape of mercury into the environment.

114. At the time of the Truman Road RCRA Inspection, the EPA inspector found that the accumulated mercury switches for the Truman Road Facility were stored in two, open, plastic milk crates. The crates were completely filled with accumulated mercury switches. The crates were not closed and not reasonably designed to prevent the escape of mercury into the environment.

115. Respondent's failure to properly store accumulated mercury-containing equipment constitutes a violation of 40 C.F.R. § 273.13(c) and 10 C.S.R. 25-16.273(1).

*Failure to Label Mercury-Containing Equipment*

116. The regulation at 40 C.F.R. § 273.14(d)(1), incorporated by 10 C.S.R. 25-16.273(1), states that universal waste mercury-containing equipment, or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste – Mercury Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

117. At the time of the Truman Road RCRA Inspection, the mercury switches and the two containers that held the mercury switches were not labeled or marked.

118. Respondent's failure to properly label or mark universal waste mercury-containing equipment, or the containers in which the equipment was contained, constitutes a violation of 40 C.F.R. § 273.14(d)(1) and 10 C.S.R. 25-16.273(1).

*12<sup>th</sup> Street Facility*

**Count 10**

**Failure to Properly Manage Used Oil**

*Failure to Properly Label Used Oil Containers*

119. The regulation at 40 C.F.R. § 279.22(c), incorporated by K.A.R. 28-31-279, requires that containers and aboveground tanks used to store used oil at generator facilities be labeled or marked clearly with the words "Used Oil."

120. At the time of the 12<sup>th</sup> Street RCRA Inspection, the following containers and/or above ground storage tanks of used oil were not labeled or clearly marked with the words "Used Oil:"

- a. One 300-gallon above ground storage tank of used oil located at the drain building;
- b. One 2 by 4-foot long modular spill platform (at least two inches full of used oil);
- c. One 4 by 4-foot long spill tray (at least four cups full of used oil);
- d. One 4 by 4-foot long spill tray (at least five cups full of used oil);
- e. One 8 by 14-foot long steel table (at least two inches of used oil);
- f. One 15-gallon tub labeled with the words "Waste Oil" (less than ¼ full); and
- g. One 2 by 4-foot long tub (at least three inches of used oil).

121. Respondent's failure to label containers used to store used oil at its 12<sup>th</sup> Street Facility constitutes a violation of 40 C.F.R. § 279.22(c) and K.A.R. 28-31-279.

*Failure to Properly Manage Used Oil Releases*

122. The regulation at 40 C.F.R. § 279.22(d)(3), incorporated by K.A.R. 28-31-279, requires that, upon detection of a release of used oil to the environment that is not subject to the requirements of 40 C.F.R. Part 280, Subpart F, a generator must clean up and properly manage the released used oil and other materials.

123. Respondent generates approximately 400 gallons of used oil per week from automotive fluid draining activities at the 12<sup>th</sup> Street Facility.

124. At the time of the 12<sup>th</sup> Street RCRA Inspection, the EPA inspector observed eight used oil releases to the environment at four locations of the 12<sup>th</sup> Street Facility:

- a. At the vehicle holding area, one 6 by 6-foot used oil release and one 1 by 1-foot area of oily liquid on the asphalt ground;
- b. At the drain building, one ½ by 1-foot area of oily liquid on the concrete floor at least four feet from the exterior of the building that had the potential to release to the environment in the event of rainfall, one ½ by ½-foot area of oily liquid released on the asphalt ground, and one 1 by 1-foot area of used oil release actively releasing from a transmission part onto the asphalt ground near the engine/transmission staging area;
- c. At the crusher pad area, one 3 by 6-foot area of oily liquid on the asphalt ground in front of three crushed vehicles, and one 1 by 4-foot area of oily liquid on the concrete ground in front of a roll-off container of transmission parts; and
- d. At the customer yard, one 4 by 4-foot area of oily liquid located on the asphalt ground underneath one car.

125. Respondent's failure to clean up and properly manage the used oil spills documented at the time of the 12<sup>th</sup> Street RCRA Inspection constitutes a violation of 40 C.F.R. § 279.22(d)(3) and K.A.R. 28-31-279.

**Count 11**  
**Failure to Conduct a Hazardous Waste Determination**

126. Pursuant to 40 C.F.R. § 262.11 and K.A.R. 28-31-4(b), a generator of “solid waste,” as that term is defined in 40 C.F.R. § 261.2, is required to determine if the solid waste is a hazardous waste.

127. At the time of the 12<sup>th</sup> Street RCRA Inspection, the EPA inspector observed that Respondent had a 55-gallon drum in the warehouse at the 12<sup>th</sup> Street Facility that was  $\frac{3}{4}$  filled with waste paint.

128. Respondent had not conducted a hazardous waste determination of the waste paint at the time of the inspection.

129. Respondent’s failure to make a hazardous waste determination on the above referenced waste streams is a violation of 40 C.F.R. § 262.11 and K.A.R. 28-31-4(b).

**III. CONSENT AGREEMENT**

130. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

131. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

132. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

133. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in this Consent Agreement and Final Order, and its right to appeal the Final Order portion of the Consent Agreement and Final Order.

134. Respondent and EPA agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney’s fees.

135. This Consent Agreement and Final Order shall resolve all civil and administrative claims for all facts and violations of the CWA and RCRA alleged in this document, existing through the effective date of this Consent Agreement and Final Order.

136. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the CWA and RCRA and regulations promulgated thereunder.

137. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's Truman Road Facility and 12<sup>th</sup> Street Facilities are in compliance with all requirements of the CWA, 33 U.S.C. §1251, et seq., and all regulations promulgated thereunder.

138. Respondent certifies that by signing this Consent Agreement and Final Order, that to the best of its knowledge, Respondent's Truman Road Facility and 12<sup>th</sup> Street Facility are in compliance with all requirements of RCRA, 42 U.S.C. § 6901, et seq., and all regulations promulgated thereunder.

139. The effect of settlement is conditional upon the accuracy of Respondent's representations to EPA.

140. 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.

141. Nothing contained in the Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

142. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a mitigated civil penalty in the amount of One Hundred Fifty Four Thousand Three Hundred Ninety One Dollars (\$154,391) as set forth in Paragraphs 155 to 157 of the Final Order portion of this Consent Agreement and Final Order.

143. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Complaint and Consent Agreement and Final Order, and to execute and legally bind Respondent to it.

144. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue from the date of delinquency until such civil penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge compounded annually will be assessed on any portion of the debt which



remains delinquent more than ninety (90) days after payment is due in accordance with 31 U.S.C. § 3717(e)(2).

145. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

#### **Effective Date**

146. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement and Final Order shall be effective on the date the Final Order is filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement and Final Order.

#### **Reservation of Rights**

147. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

148. EPA reserves the right to take enforcement action with respect to any other violations of the CWA, RCRA, or other applicable law. EPA further reserves the right to take enforcement action against Respondent for any future violations of the CWA and RCRA, and their implementing regulations, and to enforce the terms and conditions of this Consent Agreement and Final Order.

149. With respect to matters not addressed in this Consent Agreement and Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, RCRA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties, and punitive damages.

150. Full payment of the penalty proposed in this Consent Agreement and Final Order shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein, but shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law.

151. 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.

152. 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 future 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.

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

#### **IV. FINAL ORDER**

154. Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

##### **A. Payment of Civil Penalty**

155. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a civil mitigated penalty of One Hundred Fifty Four Thousand Three Hundred Ninety One Dollars (\$154,391).

156. Payment of the penalty shall identify Respondent by name and docket numbers, 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  
P. O. Box 979077  
St. Louis, Missouri 63197-9000

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

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

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

and

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

#### **B. Compliance Actions**

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

##### *At the Truman Road Facility*

159. Within sixty (60) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit evidence of used oil training, including date of training, copy of sign in sheets, and a copy of any training materials.

160. On a quarterly basis for a period of one year following the Effective Date of this Consent Agreement and Final Order, Respondent shall submit to EPA:

- a. Documentation that all used oil containers at the Truman Road Facility are clearly labeled with the words "Used Oil";
- b. Documentation that:
  - i. Absorbent mats or carpet pieces are placed under the engine compartments of all vehicles in the customer yard;
  - ii. Stained gravel and/or asphalt is removed from the vehicle yard area when vehicles are removed from the yard for crushing; and
  - iii. Except as noted in subparagraph (ii) above, all used oil spills have been cleaned up appropriately by the end of each business day upon discovery by Facility personnel. Each spill shall be recorded in a log noting the date of the spill, the date and time of clean-up, and the size of the spill;
- c. Photographic documentation of the following "high potential spill areas:" the drain building, crushing pad area, vehicle holding area, and the engine/transmission staging area.

*At the 12<sup>th</sup> Street Facility*

161. Within sixty (60) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit the following:

- a. Documentation that the waste paint in the 55-gallon drum in the warehouse has been disposed of properly, including but not limited to a signed hazardous waste manifest;
- b. Documentation that the eight used oil spills identified during the 12<sup>th</sup> Street RCRA Inspection have been properly cleaned and managed;
- c. Evidence of used oil training, including date(s) of training, a copy of sign in sheets, and a copy of all training materials;

162. On a quarterly basis for a period of one year following the Effective Date of this Consent Agreement and Final Order, Respondent shall submit to EPA:

- a. Documentation that all used oil containers at the 12<sup>th</sup> Street Facility are clearly labeled with the words "Used Oil";
- b. Documentation that:
  - i. Absorbent mats or carpet pieces are placed under the engine compartments of all vehicles in the customer yard;
  - ii. Stained gravel and/or asphalt is removed from the vehicle yard area when vehicles are removed from the yard for crushing; and
  - iii. Except as noted in subparagraph (ii) above, all used oil spills have been cleaned up appropriately by the end of each business day upon discovery by Facility personnel. Each spill shall be recorded in a log noting the date of the spill, the date and time of clean-up, and the size of the spill;
- c. Photographic documentation of the following "high potential spill areas:" the drain building, crushing pad area, vehicle holding area, and the engine/transmission staging area.

163. Respondent shall submit all documents produced to comply with Paragraphs 158 to 162 of the Final Order to the following address:

Marc Matthews, AWMD/WEMM  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

**C. Parties Bound**

164. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondents' agents, successors, and/or assigns. Respondent shall ensure that its

directors, officers, employees, contractors, consultants, firms, or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**COMPLAINANT:**

U.S. Environmental Protection Agency, Region 7

\_\_\_\_\_  
Karen Flourney  
Director  
Water, Wetlands, and Pesticides Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mary Goetz  
Branch Chief  
Waste Enforcement and Materials Management Branch  
Air and Waste Management Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Katherine Reitz  
Attorney Advisor  
Office of Regional Counsel

\_\_\_\_\_  
Date



**FOR RESPONDENT:**

Pick-N-Pull Auto Dismantlers, Kansas City, LLC

*Peter B. Saba*

Signature

*April 16, 2018*

Date

*Peter B. Saba*

Name

*Secretary*

Title

The Respondent is ORDERED to comply with all terms of the Consent Agreement and Final Order effective immediately. This Final Order shall become effective upon filing.

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:

reitz.katherine@epa.gov.

Copy via Email to Respondent:

daguariglia@bclplaw.com;  
generalcounsel@schl.com; and  
ssloan@schl.com.

Copy via Certified Mail, Return Receipt Requested to Respondent:

Scott Sloan  
Vice President – Environmental  
Schnitzer Steel Industries, Inc.  
23711 63<sup>rd</sup> Avenue SE  
Woodinville, WA 98072

Copy via first class mail to:

General Counsel  
Schnitzer Steel Industries, Inc.  
299 SW Clay Street  
Suite 350  
Portland, OR 97201

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Lisa Haugen  
Regional Hearing Clerk