



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Blue Ridge Regional Office

www.deq.virginia.gov

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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
PITT OHIO EXPRESS, LLC
FOR
PITT OHIO EXPRESS ROANOKE TERMINAL
EPA ID No. VAR000505347**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Pitt Ohio Express, LLC for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
4. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
5. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled, as defined by 40 CFR § 260.10.

6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
7. "Designated Facility" means (1) A hazardous waste treatment, storage, or disposal facility which: (i) has received a permit (or interim status) in accordance with the requirements of 40 CFR Parts 270 and 124; (ii) has received a permit (or interim status) from a State authorized in accordance with 40 CFR Part 271; or (iii) is regulated under 40 CFR § 261.6(c)(2) or 40 CFR § 266, Subpart F; and (iv) that has been designated on the manifest by the generator pursuant to 40 CFR § 262.20.
8. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
9. "Facility" or "Site" means the Pitt Ohio Express Roanoke Terminal, located at 1512 Plantation Road in Roanoke, Virginia.
10. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
11. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
13. "Order" means this document, also known as a Consent Order.
14. "POE" means Pitt Ohio Express, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. POE is a "person" within the meaning of Va. Code § 10.1-1400.
15. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effective date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
16. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

17. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).
18. "Storage" means the holding of solid or hazardous waste for a temporary period, at the end of which the waste is treated, disposed of, or stored elsewhere, as defined by 40 CFR § 260.10 and 9 VAC 20-81-10, as applicable.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. POE owns and operates the Facility, which is located in Roanoke, Virginia. The Facility is a transportation hub for general freight trucking, both long and short distance. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. POE submitted a RCRA Subtitle C Site Identification Form for the Facility dated March 27, 2003 that gave notice of regulated activity at the Facility as a SQG of hazardous waste. POE was issued EPA ID No. VAR000505347 for the Facility.
3. At the Facility, POE generates solid wastes which are also hazardous wastes. Hazardous wastes generated at the Facility include wastes with the following waste codes: D001, D002, F001, F002, F003 and F005 as described in 40 CFR § 261.21. These hazardous wastes are accumulated in containers at the Facility after generation.
4. On September 11, 2013 and November 4, 2014, DEQ-BRRO staff inspected the Facility for compliance with the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, the Department made the following observations:
 - a. For shipments of hazardous waste during 2012-2014, POE did not prepare and use hazardous waste manifests. A bill of lading but no manifest was used for: six shipments in 2012, 3 shipments in 2013, and 1 shipment in 2014.
 - b. For shipments of hazardous waste during 2012-2014, POE did not include its EPA ID number on a manifest, as required by the Appendix to 40 CFR Part 262. A bill of lading but no manifest (and therefore no EPA ID number) was used for: six shipments in 2012, 3 shipments in 2013, 1 shipment in 2014.

- c. For shipments of hazardous waste during 2012-2014, POE did not use a manifest to specify a Designated Facility for disposal of the waste. Although in 2014 manifests with EPA ID numbers were used for 4 shipments, the facility listed as a Designated Facility on those manifests was not a valid TSD.
 - d. For shipments of hazardous waste during 2012-2014, POE did not determine whether the waste met land disposal restrictions or whether the waste needed to be treated before it could be disposed of.
 - e. For shipments of hazardous waste during 2012-2014, POE did not prepare and attach land disposal restriction ("LDR") forms to the hazardous waste shipping papers.
 - f. For shipments of hazardous waste during 2012-2014, POE did not file exception reports when it did not receive a copy of the terminated manifest from the Designated Facility within 60 days of the date the waste was accepted by the initial transporter.
 - g. As of the September 11, 2013 inspection, POE did not provide documentation to DEQ during or after the inspection that the Facility attempted to make emergency preparedness and prevention arrangements with local emergency response authorities.
5. 40 CFR § 262.20(a)(1) requires that hazardous waste generators who transport, or offer for transport a hazardous waste for offsite treatment, storage, or disposal prepare a manifest in accordance with the requirements of Appendix to 40 CFR Part 262.
 6. 40 CFR § 262.20(b) requires that generators of hazardous waste designate on the manifest one facility which is permitted to handle the waste described on the manifest.
 7. 40 CFR § 268.7(a)(1) requires that generators of hazardous waste determine if the waste has to be treated before it can be land disposed.
 8. 40 CFR § 268.7(a)(2) requires that if the waste does not meet the treatment standards, or if the generator chooses not to make the determination of whether the waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file.
 9. 40 CFR § 262.42(b) requires that SQGs who do not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the EPA Regional Administrator for the Region in which the generator is located.

10. 40 CFR § 265.37(a) requires SQGs to attempt to arrange agreements regarding emergency preparedness and prevention with local police, fire and emergency response teams, emergency response contractors, and local hospitals.
11. On April 22, 2014, based on the September 11, 2013 inspection and follow-up information, the Department issued NOV No. 14-04-BRRO-004 to POE for the violations described in Paragraph C(4) above.
12. On January 30, 2015, based on the inspection and follow-up information, the Department issued NOV No. 15-01-BRRO-004 to POE for the violations described in Paragraph C(4) above.
13. On March 3, 2015, POE submitted a written response to the NOVs.
14. Based on the results of the September 11, 2013 and November 4, 2014 inspections, and the documentation submitted by POE, the Board concludes that POE has violated 40 CFR §262.20(a)(1), 40 CFR §262.20(b), 40 CFR §268.7(a)(1), 40 CFR §268.7(a)(2), 40 CFR §262.42(b), and 40 CFR §265.37(a) as described in paragraphs C(4), above.
15. POE has submitted documentation that verifies that the violations described in Paragraph C(4), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Pitt Ohio Express, LLC, and Pitt Ohio Express, LLC agrees to pay a civil charge of \$25,025.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Pitt Ohio Express, LLC shall include its Federal Employer Identification Number (FEIN) (_____) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of POE for good cause shown by POE, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, POE admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. POE consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. POE declares that it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by POE to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. POE shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. POE shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. POE shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;

- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which POE intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and POE.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after POE has completed all of the requirements of the Order;
 - b. POE petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to POE.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve POE from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by POE and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of POE certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind POE to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of POE.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, POE voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15 day of June, 2015.



Robert J. Weld, Regional Director
Department of Environmental Quality

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Pitt Ohio Express, LLC voluntarily agrees to the issuance of this Order.

Date: 4/27/15 By: Jeff Mercadante

Commonwealth of ~~Virginia~~ ^{PENNSYLVANIA} PITTSBURGH
City/County of ALLEGHENY

The foregoing document was signed and acknowledged before me this 27TH day of

APRIL 2015, by JEFF MERCADANTE

Marilyn L. Bittel
Notary Public

Registration No.

My commission expires: JUNE 21, 2016

Notary seal:

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Marilyn L. Bittel, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires June 21, 2016
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES