COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Director

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VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CARRY-ON TRAILER, INC.
EPA ID No. VAR000507731

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 Carry-On Trailer, Inc., regarding its Facility in Montross, Virginia, 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. "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.

2. "CEI" means compliance evaluation inspection.

3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

4. "COT" means Carry-On Trailer, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. COT is a "person" within the meaning of Va. Code § 10.1-1400.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

7. "EPA" means Environmental Protection Agency.

8. "Facility" or "Site" means the Carry-On Trailer, Inc. Facility located at 159 Industrial Park Drive in Montross (Westmoreland County), Virginia.

9. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.

10. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

11. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).

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" or "Order by Consent."

14. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

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 effected 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. "Va. Code" means the Code of Virginia (1950), as amended.

19. "VAC" means the Virginia Administrative Code.

20. "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. Carry-on Trailer Corporation (COT) owns and operates the Facility which manufactures utility and cargo trailers in Montross, Virginia. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. From August 20, 2004, through January 1, 2007, COT was a LQG of hazardous waste. COT was issued EPA ID No. VAR000507731 for the Facility. COT submitted a RCRA Subtitle C Site Identification Form (received January 1, 2007) that gave notice of regulated waste activity at the Facility as a SQG of hazardous waste. COT submitted a RCRA Subtitle C Site Identification Form (received October 22, 2009) that gave notice of regulated waste activity at the Facility as a LQG of hazardous waste. COT submitted a RCRA Subtitle C Site Identification Form (received January 6, 2010) that gave notice of regulated waste activity at the Facility as a SQG of hazardous waste. COT submitted a RCRA Subtitle C Site Identification Form (received June 22, 2010) that gave notice of regulated waste activity at the Facility as a LQG of hazardous waste. On November 6, 2014, the Department discovered that COT is a small quantity generator of universal waste.

3. At the Facility, COT generates waste paint and related materials such as rags, brushes, sludge, cleanup materials containing toluene, and paint booth filters which are solid wastes. Toluene is also a listed hazardous waste with waste code F003, as described in 40 CFR § 261.31, and waste paint and related materials are ignitable characteristic wastes with waste code D001 as described in 40 CFR §261.21. Hazardous Waste is accumulated in containers at the Facility after its generation.

4. On November 6, 2014, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

    a. Accumulating Hazardous Waste for more than 90 days without a permit,
    b. Failure to provide a copy of the contingency plan to State and local emergency services,
    c. Failure to document that universal waste lamps were accumulating on site for less than one year.

5. 40 CFR 262.34(b) states that a generator of 1,000 kilograms or greater of hazardous waste in a calendar month, who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, and 267 and the permit requirements of 40 CFR part 270.

6. 40 CFR 265.53(b) states that a copy of the contingency plan and all revisions to the plan must be submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

7. 40 CFR 273.15(a) & 40 CFR 273.15(c) states that a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler and 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.

8. On December 23, 2014, the Department issued NOV No. 2014-12-PRO-601 to COT for the violations described in paragraphs C(4) – C(7), above.

9. On December 29, 2014, COT responded to the NOV and declined a face to face meeting choosing to discuss the matter over the telephone that day.

10. On January 8, 2015, COT completed a revision to the contingency plan and submitted a copy to all the proper authorities required under 40 CFR 265.53(b).

11. On January 16, 2015, COT provided the Department with a copy of revised universal waste handling procedures to prevent future violations.

12. On January 29, 2015, COT submitted revised hazardous waste handling procedures to prevent 90 day accumulation violations.

13. Based on the results of November 6, 2014 inspection, the discussion on December 29, 2014, and the documentation submitted from January 8 through January 29 of 2015, the Board concludes that COT has violated 40 CFR 262.34(b), 40 CFR 265.53(b), 40 CFR 273.15(a), and 40 CFR 273.15(c) as described in paragraphs above.

14. COT has submitted documentation that verifies that the violations described in paragraphs C(4) through C(7), 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 COT, and COT agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $12,250 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

COT 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, COT shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of COT for good cause shown by COT, 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, COT admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. COT 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. COT declares 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 COT 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. COT 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. COT shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. COT 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 the COT 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 COT.

11. This Order shall continue in effect until:

    a. COT 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

    b. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to COT.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve COT 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 COT 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 COT 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 COT to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of COT.

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, COT voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2016.

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

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Carry – On Trailer, Inc. voluntarily agrees to the issuance of this Order.

Date: 2/22/16 By: Rob McDevitt, V.P. of HR.
(Person) (Title)
Carry – On Trailer, Inc.

Commonwealth of Virginia
City/County of Westmoreland

The foregoing document was signed and acknowledged before me this 22 day of

Feb, 2016, by Rob McDevitt who is

V.P. of H.R. of Carry – On Trailer, Inc., on behalf of the corporation.

Samantha Hoffman
Notary Public

W-00148272
Registration No.

My commission expires: Aug 13, 2016

Notary seal:

SAMANTHA HOFFMAN NOTARY PUBLIC FRANKLIN COUNTY GEORGIA EXPIRES AUG. 13, 2016

APPENDIX A

On or before May 1, 2016, Carry-On Trailer shall submit a revised procedures manual for the handling of universal waste lamps. All lamps, including "Green Dot" lamps, shall be handled as universal waste and in accordance with Title 40 CFR Part 273. Carry-On Trailer shall submit all requirements of Appendix A of this Order to:

Frank Lupini
Enforcement Specialist
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5156
804-527-5106 (fax)
Frank.Lupini@deq.virginia.gov