COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

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

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

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

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

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

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

8. "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).

9. "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.

10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

11. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

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

13. "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.

14. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

15. "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).

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

17. "VAC" means the Virginia Administrative Code.

18. "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.

19. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

SECTION C: Findings of Fact and Conclusions of Law

1. Carry-On Trailer (COT) owns and operates the Facility in Montross, Virginia. The Facility constructs small and medium truck trailers. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. 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 was issued EPA ID No. VAR000507731 for the Facility. The Facility was an episodic LQG in 2009.

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.

4. On August 20, 2009, DEQ received an anonymous citizen report of a discharge of 200 – 300 gallons of paint to State Waters which occurred at the Facility on August 15, 2009. DEQ spoke with the Facility manager on August 21, 2009, who stated that there was a paint spill of 100 gallons which was spilled onto the interior floor of the Facility and subsequently reclaimed and used. DEQ inspected the facility on August 25, 2009, to assess the remediation and environmental impact of the spill. DEQ inspected the perimeter of the building and several stormwater drop-inlets and found no evidence of paint spill impacts.

5. On August 26, 2009, Facility personnel conducting their own investigation of the discharge discovered paint residue in the stormwater collection system and removed 30 pounds of material believed to have resulted from an August 3rd spill, which had not been reported to DEQ.

6. On September 25, 2009, the Department received a report from COT's consultant disclosing that two unreported discharges of paint occurred; one on August 3, 2009, outdoors on the west side of the Facility; and, one on August 15, 2009, indoors at the utility trailer plant dip tank room. A review of the September 25, 2009 report revealed the following:

   - Laboratory analysis of the solid residues related to the August 3rd paint spill and collected from the stormwater drain boxes exhibited characteristics of ignitability, and the soil samples collected at the inlet to stormwater pond #1 indicates detectable levels of VOCs (Ethylbenzene, Isopropylbenzene, Xylenes, Methyl acetate, Methylcyclohexane, and Toluene).

40 CFR § 265.31, (as referenced by 262.34 (a)(4)) states that facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

- Drums used to hold hazardous waste were modified by cutting the top, and the top was then placed over the drum and sealed with shrink wrap plastic.

40 CFR § 265.173 (a) (as referenced by 40 CFR §262.34(d)(4)) states that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste. 40 CFR § 265.173 (b) states a container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

- Four 55-gallon drums of hazardous waste were stored at the Facility from November of 2008 until August of 2009 (approximately 270 days). COT does not hold a permit for the storage of hazardous waste. On January 1, 2007, COT submitted an EPA 8700-12 Form, identifying the Facility as a Small Quantity Generator of hazardous waste.

40 CFR §262.34(f) states that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264 and 265 and the permit requirements of 40 CFR part 270.

- Cardboard mats are routinely used by Facility personnel to collect spilled paint which are then allowed to air dry prior to disposal.

40 CFR § 260.10 defines "treatment" as any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. 40 CFR § 270.1(c) states that a permit is required for the "treatment," "storage," and "disposal" of any "hazardous waste."

7. On December 21, 2009, the Department issued an NOV to COT for the violations discovered during the August 25, 2009 inspection and reported in the September 25, 2009 data submittal. COT was cited for unauthorized discharges, failure to close a hazardous waste storage container, failure to meet hazardous waste accumulation time requirements, and failure to operate the Facility to prevent hazardous waste discharges.

8. On January 27, 2010, the Department met with COT to discuss the NOV and their consultant's report. On February 24, 2010, a DEQ Hazardous Waste Inspector conducted a Compliance Evaluation Inspection (CEI) to determine the Facility's 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) In March 2010, Facility personnel notified DEQ that they believed that the thirteen drums (6,500 pounds) of hazardous waste shipped September 18, 2009 using manifest number 6328193 was an accumulation of the previous nineteen months generation that hadn't been picked up. COT did not have documentation to indicate the generator status during the months when these wastes were generated. COT did not have a permit to store hazardous waste. The waste was shipped on September 18, 2009. On March 19, 2010, COT provided a copy of the new weekly inspection checklist, which included verification that all drums were dated and the drums were within the allowed time limit (<90 days).

   40 CFR §262.34(f) states that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264 and 265 and the permit requirements of 40 CFR part 270.

   b) Facility written procedure *Hazardous Waste Removal Procedures – Updated January 2010* instructs personnel to dry paint drippings at a minimum overnight prior to placing it into the waste dumpsters, and that if a pool of paint is accidently spilled onto this paper, it should be treated immediately with absorbent material and removed to the hazardous waste accumulation containers. Observation revealed that COT utilized heavy-gauged brown paper cardboard mats to protect the floors from dripping paint. Personnel indicated that they were instructed to leave the cardboard mats in place overnight or over the weekend to ensure that the paint was dry before placing the cardboard in the trash. Observation indicated wet paint dripping from the parts exiting from the cargo trailer paint dip tank. This paint was pooling onto the cardboard mats. Some of these paint pools were not expected to dry immediately. Waste accumulation containers were full and located outside in the paint shed. It appeared that the cardboard mats would normally last several days until becoming torn, ineffective as a drop cloth, or a tripping hazard. On March 12, 2010 the Facility informed DEQ that they had placed waste containers on the exit side of the cargo dip tank enclosure and on the exit side of the utility dip tank enclosure and revised the procedures. Photographs of the two containers, dated March 9, 2010, were provided. On March 19, 2010 COT provided revised *Hazardous Waste Removal Procedures* which included instructions to wipe up the spilled paint with rags and place the wet paint rags in the designated satellite hazardous waste disposal barrels and to keep the barrels closed. The revised procedure also instructs facility personnel to completely

remove the cardboard mats and replace them with new mats prior to beginning work every Monday morning.

40 CFR § 260.10 defines "treatment" as any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. 40 CFR § 270.1(c) states that a permit is required for the "treatment," "storage," and "disposal" of any "hazardous waste."

c) Documentation indicated that COT entered incorrect information on manifests. Manifests were reviewed for the previous three years, February 2007 through February 2010. All of the manifests included the U.S. DOT Description: "RQ, Waste Butanols," and were used to ship all hazardous waste streams from the Facility, including but not limited to: waste paint, waste paint sludge, waste paint spill clean-up materials, and paint booth filters that may have been reactive. During the inspection, COT indicated that a special pick-up in 2005 contained a bad batch of paint received containing N-Butyl Acetate; this description had been used to ship all waste since that date. On March 1, 2010 COT informed DEQ that they would ship the waste paint as "Waste Paint Related Material" in the future and were evaluating the paint booth filters. On March 24, 2010 COT provided documentation that they had informed the designated facility of the incorrect manifests. *This violation has been addressed and no further action is required.*

40 CFR §262.20(a)(1) states that a generator who transports, or offers for transport, a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to this part.

d) Documentation indicated that COT may not have received return-to-generator copies for manifest number 2772990, shipped January 15, 2008 and that COT did not submit notification to DEQ. On March 12, 2010, DEQ received copies of manifests signed by the TSDF and certificates of compliance and disposal for all manifests shipped from the facility October 2007 through December 2009. *This violation has been addressed and no further action is required.*

40 CFR §262.42 (b) states that a generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does 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.

e) Facility personnel indicated that used fluorescent lamps were disposed of in the regular trash as they were replaced one at a time. The replacement lamps were marked "Sylvania SuperSaver" and "Phillips Alto" in green ink and facility personnel assumed the lamps were not hazardous waste. The facility did not have information documenting that these lamps contained less than 0.2 mg/l mercury utilizing the Toxic Characteristic Leaching Test (TCLP). Manufacturers' website information indicates that Phillips Alto lamps were "TCLP-Compliant" but did not provide data for the Sylvania SuperSaver lamps. On March 19, 2010 COT provided revised *Hazardous Waste Removal Procedures* which included instructions for Facility personnel to purchase only "green tip" or "low mercury" type replacement lamps. The procedure also requires Facility personnel to obtain and keep on file the current TCLP for each type of lamp purchased. *This violation has been addressed and no further action is required.*

40 CFR §262.44 states that a generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is subject to 40 CFR § 262.40(a).

Section 262.40(c) states that a generator must keep records of any test results, waste analyses, or other determinations made in accordance with Sec. 262.11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

f) Documentation indicated that COT provided incorrect land disposal restriction information to the designated treatment facility (TSDF). COT informed the TSDF that it was shipping "Waste Butanols" but actually shipped waste paint, waste paint sludge, waste paint spill clean-up materials, and paint booth filters that may have been reactive. During the inspection, Facility personnel indicated that a special pick-up in 2005 contained a bad batch of paint received containing N-Butyl Acetate; this description had been used to ship all waste since that date. On March 1, 2010 COT informed DEQ that they would ship the waste paint as "Waste Paint Related Material" in the future and were evaluating the paint booth filters. COT provided a copy of a new Waste Profile an on March 23, 2010, provided documentation, including laboratory analysis, for the paint filters indicating that they were not hazardous waste. *This violation has been addressed and no further action is required.*

40 CFR §268.7(a)(2) states that if waste or contaminated soil does not meet treatment standards, or if the generator chooses not to make the determination of whether his 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.

g) Interviews and observations indicated that COT employees may not have received appropriate training. COT did not have documentation that on-site personnel had received training. In addition Facility personnel did not demonstrate sufficient knowledge of hazardous waste regulations as follows: 1) Employees responsible for weekly inspections, manifests, and recordkeeping did not appear to be familiar with

inspection, manifest, and land disposal restriction notification requirements; 2) Employees responding to the paint spill in August 2009 were not aware of proper clean-up procedures or how to differentiate between incidental spills that can be responded to by personnel trained in normal plant operations and spills requiring response by more fully-trained individuals (see 29 CFR 1910.120(e)); and, 3) The facility has paint, solvent, and hazardous waste in 55-gallon drums, paint in 250-gallon totes, and paint in the two 5,000-gallon dip tanks. Facility personnel did not appear to be aware of satellite accumulation area requirements. On March 25, 2010 COT informed DEQ that a consulting firm would provide training during annual reviews of each facility.

40 CFR §262.34(d)(5)(iii) states that a generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

9. On April 12, 2010, based on the February 24, 2010 inspection, the Department issued an NOV to COT citing them for the violations observed and described in paragraphs C6 and C8, above.

10. Based on the results of the August 25, 2009 and February 24, 2010 inspections, the September 25, 2009 consultant report, and the January 27, 2010 meeting, the Board concludes that COT has violated VHWMR and the Virginia Waste Management Act, as noted above.

11. COT has submitted documentation, reviewed by the Department, which verifies that all of the violations described in Section C.8., above, have been corrected with the exception of the training documentation in Section C number 8(g).

12. In order for COT to complete its return to compliance, DEQ staff and representatives of COT have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

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 $13,500 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) [(xx-xxxxxxx)] 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 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 _____, 2010.

_____
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: 9 August 2010 By: Michael G. Skoglund V.P. Operations
(Person) (Title)
Carry – On Trailer, Inc.

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this 9 day of

August, 2010, by Michael Skoglund who is

VP Operations of Carry – On Trailer, Inc., on behalf of the corporation.

State: of GA
County: Franklin

Brannan Leigh Wicker
Notary Public

W-00063824
Registration No.

BRANNAN L WICKER
NOTARY PUBLIC HART CO
MY COMMISSION EXPIRES
SEPTEMBER 14 2013

My commission expires: _____

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Training

   On or before October 15, 2010, COT shall submit documentation demonstrating that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies in accordance with the requirements of 40 CFR §262.34(d)(5)(iii).

2. Contact

   Unless otherwise specified in this Order, COT shall submit all requirements of Appendix A of this Order to:

   Frank Lupini
   Enforcement Specialist
   VA DEQ –Piedmont Regional Office
   4949A Cox Road,
   Glen Allen, Virginia 23060
   Frank.Lupini@deq.virginia.gov