

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

In the Matter of:

)	)	)
Midway Auto Parts LLC	)	<b><u>CONSENT AGREEMENT</u></b>
d/b/a/ Muncie U Pull	)	<b><u>AND FINAL ORDER</u></b>
Kansas City, Kansas	)	
)	)	)
Respondent.	)	Docket No. CWA-07-2019-0017
)	)	RCRA-07-2019-0016
)	)	)
Proceedings under Sections 309(g) and	)	
311(b)(6) of the Clean Water Act, 33 U.S.C.	)	
§§ 1319(g) and 1321(b)(6); and Section	)	
3008(a) and (g) of the Resource Conservation	)	
and Recovery Act as amended, 42 U.S.C.	)	
§ 6928(a) and (g)	)	

## I. PRELIMINARY STATEMENT

1. The U.S. Environmental Protection Agency (EPA), Region 7 (Complainant) and Midway Auto Parts LLC d/b/a Muncie U Pull (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).

2. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

3. This Consent Agreement and Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent Agreement and Final Order.

## II. JURISDICTION

4. This administrative action is being conducted under the authority vested in the Administrator of the EPA, pursuant to Sections 309(g) and 311(b)(6) of the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act or CWA), 33 U.S.C.

§§ 1319(g) and 1321(b)(6), 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.

5. Under this Consent Agreement and Final Order, EPA alleges that Respondent, Midway Auto Parts LLC d/b/a Muncie U Pull, violated Section 301 of the CWA, 33 U.S.C. § 1321, and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

6. 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), Section 3005 of RCRA, 42 U.S.C § 6925; and regulations promulgated thereunder.

### III. PARTIES

7. 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.

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

### IV. STATUTORY AND REGULATORY BACKGROUND

#### CWA Stormwater

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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 stormwater 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).

15. 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 Act 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.

16. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, 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.

#### CWA Oil Pollution Prevention

17. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides in part that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.”

18. To implement Section 311(j), 33 U.S.C. § 1321(j), the EPA promulgated regulations to prevent oil pollution. These regulations, codified at 40 C.F.R. Part 112, set forth the requirements for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan (SPCC Plan).

19. More specifically, under the authority of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 40 C.F.R. Part 112 establishes procedures, methods and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States.

20. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” in part, as the “waters of the United States,” which are defined at 40 C.F.R. § 112.2, and which include tributaries to waters of the United States.

21. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

22. Further, under 40 C.F.R. Part 112, owners or operators of onshore facilities that have an aboveground storage capacity of more than 1,320 gallons of oil, and due to their location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare an SPCC Plan in writing, certified by a licensed Professional Engineer, and in accordance with the requirements of 40 C.F.R. § 112.7.

23. Section 311(b) of the CWA, 33 U.S.C. § 1321(b), authorizes the assessment of a civil penalty of not more than \$25,000 for violations of the regulations promulgated pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j). 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 Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$46,192 for violations that occur after November 2, 2015 where the penalty is assessed after January 15, 2018.

#### **RCRA**

24. 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).

25. 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.

26. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

27. 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 Act 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.

## V. FACTUAL BACKGROUND

28. At all times relevant to this Consent Agreement and Final Order, Respondent owned and operated a ten-acre auto salvage yard for self-service auto parts, auto dismantling and crushing, as well as metal scrapping facility under the name "Muncie U Pull Auto Salvage", at 6345 Kansas Avenue, Kansas City, Kansas ("facility" or "site").

29. At all times relevant to this Consent Agreement and Final Order, Respondent's facility stored approximately 1,100 salvaged automobiles for self-service auto dismantling on ten acres and operated under SIC codes 5015 and 5093.

### CWA Stormwater

30. Stormwater, snow melt, surface drainage and runoff water leave Respondent's site through one of at least four outfalls and flow to the Kansas River.

31. The Kansas River is a "navigable water" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

32. The Kansas River is on the EPA approved 303(d) list as impaired for total suspended solids and atrazine, and has total maximum daily loads established for E. coli, total phosphorus and biological impairments.

33. Stormwater from the site contains "pollutants," as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

34. Stormwater discharges associated with industrial activity are "point sources" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

35. The facility has "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14).

36. Stormwater runoff from industrial activity at Respondent's above referenced facility results in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

37. Respondent's discharge of pollutants, including discharges of stormwater associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(iii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

38. On September 25, 2013, KDHE received the notice of intent for permit authorization for coverage under the NPDES General Industrial Stormwater Permit KSR000877, for discharges of stormwater runoff to the Kansas River, subject to compliance with conditions and limitations set forth in the applicable NPDES Permit. The NPDES General Industrial Stormwater Permit ("NPDES Permit") was effective November 1, 2016 and expires October 31, 2021.

39. The NPDES Permit governs stormwater discharges associated with industrial activities, including automobile salvage yards.

40. The NPDES Permit authorizes Respondent to discharge pollutants only from specified point sources, identified in the NPDES Permit as one or more "outfalls," to specified waters of the United States, subject to the limitations and conditions set forth in the NPDES Permit.

41. Respondent has operated under the NPDES Permit at all times relevant to this Consent Agreement and Final Order.

42. On November 6 and 8, 2017, the EPA performed an Industrial Stormwater Inspection ("CWA Inspection") of Respondent's site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its NPDES Permit and the CWA.

43. During the CWA Inspection, the EPA inspector toured the facility, observed discharge locations, photographed various stormwater-related areas, and obtained copies of the facility's stormwater pollution prevention plan ("SWPPP"), stormwater comprehensive annual reports, and training records.

44. A Notice of Potential Violation ("NOPV") was issued by the EPA inspector at the conclusion of the CWA Inspection.

45. A copy of the Stormwater Inspection report was sent to Respondent by the EPA by letter dated February 13, 2018.

#### **CWA Oil Pollution Prevention**

46. Respondent is and was at all times relevant to this action the "owner or operator," within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of an automobile salvage operation at 6345 Kansas Avenue, Kansas City, Kansas.

47. The facility has an aggregate above-ground storage of over 1,320 gallons of oil.

48. The facility is located approximately 0.35 miles from the Kansas River. The Kansas River comprises “waters of the United States” as defined by 40 C.F.R. § 112.2 and Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

49. Respondent’s facility is an “onshore facility” within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

50. Respondent’s facility is a “non-transportation-related facility” as defined by Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

51. Respondent’s facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States in a harmful quantity. Therefore, pursuant to the CWA and 40 C.F.R. § 112.1, Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the Oil Pollution Prevention Regulations.

52. On February 13, 2018, the EPA performed an inspection of Respondent’s facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s compliance with the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112 (“SPCC Inspection”).

53. A copy of the SPCC Inspection Report was sent to Respondent by the EPA by letter dated April 16, 2018.

#### RCRA

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

55. Respondent is the “owner,” and “operator” as that term is defined in 40 C.F.R. § 260.10, of the facility.

56. On May 16 and 17, 2018, EPA conducted a RCRA Compliance Evaluation Inspection (“RCRA Inspection”) of Respondent’s facility 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.

57. At the time of the RCRA Inspection, the EPA inspector determined that the facility is a used oil generator, as defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

58. Respondent generates approximately 450 gallons of used oil per month from automotive fluid draining activities at the facility.

59. A copy of the inspection report was sent to Respondent by the EPA by letter dated July 9, 2018.

## VI. ALLEGED VIOLATIONS OF LAW

60. The facts stated above are herein incorporated by reference.

### Alleged CWA Violations

#### **Count 1** **Unauthorized Discharges**

61. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with a NPDES permit issued pursuant to CWA Section 402.

62. Respondent's NPDES Permit, in pertinent part, authorizes the discharge of stormwater runoff from the facility provided the facility maintains compliance with its NPDES Permit. Section 1.4 of Respondent's NPDES Permit states, in pertinent part, that the permit does not authorize discharge of pollutants or wastewater to waters of the State.

63. During the CWA Inspection, significant amounts of oily/dark fluid-stained soil and/or fluid puddles were present in the vehicle storage area of the facility, under and/or near greater than 60 percent of the vehicles stored.

64. Based on site conditions at the time of the EPA inspection, the size of the facility, the distance from the facility to the Kansas River, and the slope and condition of the land across that distance, stormwater containing pollutants from the facility discharged from facility Outfalls into the stormwater drainage pathway and into the Kansas River during significant precipitation event. Unauthorized discharges are violations of the Respondent's NPDES Permit and Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

#### **Count 2** **Inadequate Control Measures/Best Management Practices**

65. Sections 2.4.3 and 2.4.3(a) of Respondent's NPDES Permit requires in pertinent part, development of appropriate measures and controls to manage stormwater, and implementation of such controls, including administrative Best Management Practices (BMPs), structural BMPs, and non-structural BMPS. Further requiring good housekeeping to include "maintenance of areas in a clean, orderly manner, including handling, process, and storage areas for raw materials, scrap metals, general refuse, paints, etc."

66. During the CWA Inspection, significant amounts of oily/dark fluid-stained soil and/or fluid puddles and evidence of extremely poor housekeeping were observed in several areas around the facility including; the vehicle storage area under and/or near greater than 60 percent of the vehicles stored, the facility's fence at Outfall 004, on and around the vehicle crusher, and the west side of the processing building. Large quantities of waste material, cast off parts, and other evidence of poor housekeeping was also observed in areas including the vehicle crusher

and crusher area, outside the facility's fence at Outfall 004 and Outfall 001, and the vehicle storage area. The EPA inspector also observed several vehicle hoods open and exposed to stormwater in the vehicle storage area, and large roll-off dumpsters uncovered, leaking, and exposed to stormwater. These observations indicate that control measures are not being implemented, not being maintained, or are inadequate.

67. Respondent's failure to implement, maintain and/or modify adequate control measures is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 3**  
**Failure to Conduct and Document Routine Facility Inspections**

68. Section 2.4.3(d) of Respondent's NPDES Permit requires Respondent to conduct routine stormwater inspections, at a minimum of once each quarter. Inspection records are required to be maintained and accessible for a minimum of three years.

69. At the time of the EPA inspection, the facility did not have records of routine stormwater inspections.

70. Respondent's failure to maintain records of routine facility inspections is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 4**  
**Failure to Conduct and Document Visual Stormwater Examinations**

71. Section 2.4.5(a) of Respondent's NPDES Permit requires Respondent to conduct and document periodic visual examinations of stormwater quality from each stormwater outfall. The frequency is to be stated in the SWPPP, but at a minimum once per year. Visual examinations shall include observations of the discharge characteristics such as, the nature of the discharge, visual quality, clarity, or presence of color, odor, floating solids, settleable solids, foam, oil sheens or other sources of contamination. Visual examination reports records are required to be maintained and accessible for a minimum of three years.

72. Section 6.3 of Respondent's SWPPP requires Respondent to conduct visual monitoring of each stormwater outfall.

73. At the time of the EPA inspection, the facility did not have any records of annual visual examinations of each stormwater outfall.

74. Respondent's failure to conduct or document stormwater visual examinations is a violation of the conditions of Respondent's NPDES Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Alleged SPCC Violations**

**Count 5**  
**Failure to Prepare an SPCC Plan**

75. Under 40 C.F.R. Part 112, owners or operators of onshore facilities that have an aboveground storage capacity of more than 1,320 gallons of oil, and due to their location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare a SPCC Plan in writing in accordance with 40 C.F.R. § 112.7.

76. At the time of the EPA SPCC Inspection, Respondent did not have an SPCC Plan.

77. Respondent's failure to prepare an SPCC Plan in writing, is a violation of 40 C.F.R. § 112.3.

**Count 6**  
**Failure to Provide Adequate Secondary Containment**

78. Under 40 C.F.R. § 112.8(c)(11), regulated facilities are required to provide secondary containment sufficient to contain the entire capacity of the largest single mobile or portable oil storage container.

79. At the time of the EPA SPCC Inspection, Respondent did not have adequate secondary containment for two 240-gallon engine oil tanks, four 55-gallon oil drums, and one 275-gallon tote in the warehouse.

80. Respondent's failure to provide adequate secondary containment sufficient to contain the entire capacity of the largest single mobile or portable storage container in the warehouse is a violation of 40 C.F.R. § 112.8(c)(11).

**Alleged RCRA Violations**

**Count 7**  
**Failure to Properly Manage Used Oil**

*Failure to Store Used Oil in a Container in Good Condition*

81. The regulation at 40 C.F.R. § 279.22(b)(1), incorporated by K.A.R. 28-31-279, requires used oil to be stored in containers that are in good condition (i.e. no severe rusting, apparent structural defects, or deterioration).

82. At the time of the RCRA Inspection, five full 55-gallon used oil storage drums, located outside the north wall of the Process Building had multiple dents located on the upper and/or middle drum body, indicating structural defects in the containers.

83. At the time of the RCRA Inspection, one 275-gallon tote, located inside the Process Building, had a two by two-foot dent in the middle of the tote body, indicating a structural defect in the container.

84. Respondent's failure to store used oil in containers that are in good condition constitutes a violation of 40 C.F.R. § 279.22(b)(1), and K.A.R. 28-31-279.

*Failure to Properly Label Used Oil Containers*

85. 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."

86. At the time of the 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. Five full 55-gallon drums located outside of the Process Building.
- b. One open 275-gallon tote, less than one quarter full, located outside of the Process Building.
- c. One 500-gallon above ground storage tank labeled "Waste Oil - Diesel" located outside of the Process Building.
- d. One orange 5-gallon pail, approximately one quarter full, located inside the Process Building.
- e. One 5 by 25-foot long container, approximately one quarter full, located inside the Process Building
- f. One open 275-gallon tote, less than one quarter full located inside the Process Building.

87. Respondent's failure to label containers used to store used oil at its facility constitutes a violation of 40 C.F.R. § 279.22(c) and K.A.R. 28-31-279.

*Failure to Properly Clean Up and Manage Used Oil Releases*

88. 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.

89. At the time of the RCRA Inspection, the EPA inspector observed the following used oil releases to the environment in the following locations of the facility:

- a. In the Vehicle Staging/Parking lot, the following areas of black stains on the gravel ground were identified by Respondent as used oil:
  - i. One 4 by 4-foot area;
  - ii. One 1 by 1-foot area;

- iii. One 1 by 2-foot long area; and
  - iv. Four one-half by one-half foot areas.
- b. In the Old Rip/Rap Area (located southeast of the 30 by 30-foot square concrete pad), the following areas of black stains on the gravel ground were identified by Respondent as used oil:
- i. One 10 by 10-foot area with miscellaneous engine parts;
  - ii. One 2 by 2-foot area under a dismantled truck bed; and
  - iii. One 5 by 5-foot area. This area included a black liquid puddle (at least one foot-wide and three inches deep) located behind/underneath one black 20-cubic yard roll-off container of miscellaneous engine parts.
- c. Outside the Process Building, the following areas of black stains on the gravel ground were identified by Respondent as used oil:
- i. One 5 by 5-foot long area located outside the north wall (this area contained one open 275-gallon tote of used oil, less than one quarter full);
  - ii. One nickel size area of oily liquid actively dripping from a vehicle axle part located outside the north wall;
  - iii. One 20 by 20-foot area (located on the gravel ground directly in front of the Process Building); and
  - iv. One 6 by 6-foot area located outside the west wall.
- d. At the Vehicle Hold Area, the inspector observed the following areas of black stains on the gravel ground were identified by Respondent as used oil:
- i. Multiple areas located under the vehicles and between vehicle aisles. Black stains (one to four feet long) were observed under 60% of the 80 to 120 vehicles at the Vehicle Hold Area;
  - ii. One 6 by 6-foot area located under a yellow school bus labeled "74." The area extended from the door entry to the front right bumper; and
  - iii. One 5 by 5-foot area of black stains located on the gravel ground at the RV Area -Vehicle Hold Area.
- e. At the Return Parts Area, the following areas of black stains on the gravel ground were identified by Respondent as used oil:
- i. One 2 by 2-foot area (located between two 4 by 8-foot long metal structures for the collection of returned engine parts);
  - ii. One 1 by 6-foot long area; and
  - iii. One 4 by 4-foot area.
- f. At the Catch-All Area (south of the Customer Pull Yard), one 12 by 12-foot area of black stains on the gravel ground was identified by Respondent as used oil.
- g. At the Customer Pull Yard, multiple areas of black stains/oily liquid were located on the gravel ground under the vehicles and between vehicle aisles.

Black stains/oily liquid, one to four feet long, were observed under 90% of the 1,030 vehicles located at the Customer Pull Yard and were identified by Respondent as used oil.

- h. Underneath and directly behind the Crusher Unit, one 12-foot long black stain that varied in width between a half foot to five-feet. Approximately four feet of the stain extended outside of the facility's boundary. Respondent identified the stain as used oil that had accumulated for at least one year.

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

## VII. CONSENT AGREEMENT

91. 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.

92. 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.

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

94. 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.

95. 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.

96. 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.

97. 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.

98. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is in compliance with all requirements of the CWA, 33 U.S.C. § 1251, *et seq.*, and all regulations promulgated thereunder.

99. Respondent certifies that by signing this Consent Agreement and Final Order, that to the best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901, *et seq.*, and all regulations promulgated thereunder.

100. The effect of settlement is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in paragraphs 98 and 99 of this Consent Agreement and Final Order.

101. 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.

102. 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.

103. 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 \$85,000 as set forth in the Final Order portion of this Consent Agreement and Final Order.

104. 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.

105. 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).

106. 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**

107. 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**

108. 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 Sections 309 and 311 of the CWA, 33 U.S.C. §§ 1319 and 1321, 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.

109. 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.

110. 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.

111. Full payment of the penalty proposed in this Consent Agreement and Final Order shall only resolve Respondent's liability for federal civil penalties for the violations 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.

112. 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.

113. 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.

114. 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.

#### **Payment of Civil Penalty**

115. Respondent shall pay a civil penalty of \$85,000 as set forth below:

- i. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a civil penalty of \$35,000.
- ii. Within sixty (60) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a civil penalty of \$25,000.
- iii. Within one hundred and twenty (120) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a civil penalty of \$25,000.

116. 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>.

117. 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

Elizabeth Huston, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7

11201 Renner Boulevard  
Lenexa, Kansas 66219.

#### **Compliance Actions**

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

119. 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 facility are clearly labeled with the words "Used Oil";
- b. Documentation that:
  - i. Stained gravel and/or asphalt is removed from the vehicle yard area when vehicles are removed from the yard for crushing; and
  - ii. 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.

120. Respondent shall submit all documents produced to comply with Paragraphs 124 to 125 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.

#### **Parties Bound**

121. 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

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Jeffrey Robichaud  
Director  
Water, Wetlands, and Pesticides Division

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Date

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Nicole Moran  
Acting Branch Chief  
Waste Enforcement and Materials Management Branch  
Air and Waste Management Division

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Date

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Wilfredo Rosado-Chaparro  
Acting Branch Chief  
Chemical and Oil Release Prevention Branch  
Air and Waste Management Division

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Date

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Elizabeth Huston  
Senior Counsel  
Office of Regional Counsel

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Date

**FOR RESPONDENT:**

Midway Auto Parts LLC d/b/a Muncie U Pull

RCF  
Signature

4/3/19  
Date

Ryan Falco  
Name

GM  
Title

**FINAL ORDER**

Pursuant to 40 C.F.R. 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

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Karina Borromeo  
Regional Judicial Officer

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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:

*Huston.liz@epa.gov.*

Copy via Certified Mail, Return Receipt Requested to Respondent:

Danielle Wilcox  
Registered Agent for Midway Auto Parts, LLC  
10806 West 148th Street,  
Overland Park, Kansas 66221

Ryan Falco  
General Manager  
Midway Auto Parts  
4210 Gardner Avenue  
Kansas City, Missouri 64120

Copy via first class mail to:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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Lisa Haugen  
Regional Hearing Clerk