

Exhibit 27

Post-2014 Documents, Section Asserting Operator Determinations Other than 130A-290.

Ex. 27(a) – Documents related to *WASCO v. NC DENR* (2013–2016).

Ex. 27(b) – Modification to Post-Closure Order for Schlage Lock (2016).

Ex. 27(c) – Proposed modification to Post-Closure Order for Daikin (2017).

Ex. 27(d) – Immediate Action NOV issued to Loren Lanter (June 2018).

Exhibit 27(a)

Documents related to *WASCO v. NC DENR* (2013–2016).

Ex. 27(a)(i) – August 2013 Directive

Ex. 27(a)(ii) – Department’s MSJ Brief

Ex. 27(a)(iii) – Department’s PJR Brief

Ex. 27(a)(iv) – Department’s Appellate Brief

Exhibit 27(a)(i)

August 2013 Directive, dated 16 August 2013

- * Asserts WASCO is “operator” under the State hazardous waste management program by citing a federal CERCLA case and 40 CFR 260.10; does **not** mention 130A-290(a)(21).

Included as Exhibit 9

Exhibit 27(a)(ii)

Department's Brief in Support of MSJ, dated 25 Sept. 2014

- * Asserts WASCO is “operator” under the State hazardous waste management program by citing a federal CERCLA case and 40 CFR 270.2; does **not** mention 130A-290(a)(21).

Included as Exhibit 10.

Exhibit 27(a)(iii)

Department's Brief in Response to WASCO's
Petition for Judicial Review, dated 29 May 2015

- * Asserts WASCO is “operator” under **G.S. 130A-290**, 40 CFR 260.10, and 40 CFR 270.2, citing a federal CERCLA cases, but further contends:
 - 1) Court should treat the definitions in the federal RCRA regulations “as controlling,”
 - 2) definition in 130A-290(a)(21) “only applies to Article 9 of Chapter 130A, which further authorizes a departure ‘where a different meaning is required by the context,’”
 - 3) similarities between definitions of “operator” in 40 CFR 260.10, “owner or operator” in 270.2 and “owner or operator” in **CERCLA § 101(A)(20)**, 42 USC 9601(20(A)) make it appropriate to consider federal CERCLA cases

Included as Exhibit 23.

- * *But see* notes 20–21 of Petition for Rule-making, and Exhibit 13 (Department's admissions — served two weeks before it filed its summary judgment motion—that it has no evidence that WASCO meets the required elements of the definition of “operator” under G.S. 130A-290(a)(21) or 40 CFR 260.10).

Exhibit 27(a)(iv)

Department's Appellate Brief, dated 12 July 2016

- * Asserts WASCO is “operator” under G.S. 130A-290, 40 CFR 260.10, and 40 CFR 270.2, citing a federal CERCLA cases, but further contends:
 - 1) definition in 40 CFR 270.2 applies “most specifically to post-closure activities such as the ones at issue in this case,”
 - 2) the fictional CERCLA “*Bestfoods* test” applies to “operator” determinations under the State’s hazardous waste management program (“WASCO rejects the *Bestfoods* test”),
 - 3) similarities between definitions of “operator” in 40 CFR 260.10, “owner or operator” in 270.2 and “owner or operator” in **CERCLA § 101(A)(20)**, 42 USC 9601(20(A) make it appropriate to consider federal CERCLA cases

Included as Exhibit 25.

- * *But see* notes 20–21 of Petition for Rule-making, and Exhibit 13 (Department’s admissions — served two weeks before it filed its summary judgment motion—that it has no evidence that WASCO meets the required elements of the definition of “operator” under G.S. 130A-290(a)(21) or 40 CFR 260.10).

Exhibit 27(b)

Section's Modification to Existing Post-Closure Order for
Schlage Lock (NCD065300519) (Sept.–Dec. 2016).

Ex. 27(b)(i) – Public Notice of Proposed Modifications to Existing Post-Closure Order
(comment period: Sept 17 to Nov. 1, 2016), (excerpted)

(changes operator determination to 40 CFR 260.10 and 270.2, *removes* original cite
to 130A-290(a)(21); also cites most recent Part A).

Ex. 27(b)(ii) – Section Issues Modified Post-Closure Order, dated 01 Dec. 2016

Ex. 27(b)(iii) – Original Post-Closure Order, dated 08 Dec. 2011

(operator determination cites 130A-290(a)(21); also cites most recent Part A).

- * Public comment period for the Section's proposed changes to the 2011 original Order opened approximately *three weeks before* the Appellate Court hearing in *WASCO v. NC DENR*; but see Exhibit 21 (Section issued three 5-year reviews that use 130A-290(a)(21) over the period of September to December 2016, and five additional reviews in 2017 that do the same).

Exhibit 27(b)(i)

Public Notice of Proposed Modifications to Existing Post-Closure Order for Schlage Lock (comment period: Sept 17 to Nov. 1, 2016), (excerpted)

- * Changes operator determination to 40 CFR 260.10 and 270.2, omits original cite to 130A-290(a)(21); also cites most recent Part A.

PUBLIC NOTICE
PUBLIC HEARING
FOR
DRAFT ADMINISTRATIVE ORDER IN LIEU OF POST-CLOSURE PERMIT
MODIFICATION FOR FORMER SCHLAGE LOCK FACILITY

This is to notify the public of the issuance by the North Carolina Hazardous Waste Section of a draft Administrative Order in lieu of Post-Closure Permit modification for the Former Schlage Lock Facility, located on 3551 North Wesleyan Boulevard, in Rocky Mount, North Carolina.

A Public Hearing will be held October 17, 2016 at 11:00 a.m. in the Wiley Room, Braswell Memorial Public Library, 727 North Grace Street, Rocky Mount, North Carolina. All attendees will have the opportunity to present five (5) minute oral statements regarding the draft Administrative Order in lieu of Post-Closure Permit modification and/or to submit written comments and data.

In conjunction with the issuance of the draft modified Administrative Order in lieu of Post-Closure Permit, written comments can also be sent during the public comment period of September 17, 2016 – November 1, 2016 to the following address:

Ms. Julie S. Woosley, Section Chief
North Carolina Hazardous Waste Section
1646 Mail Service Center
Raleigh, NC 27699-1646

All data submitted by the applicant is part of the administrative record and available for your review Monday through Friday during office hours (9:00 a.m. to 4:00 p.m.). Copies of the modified Administrative Order in lieu of Post-Closure Permit and a Fact Sheet are available at the Hazardous Waste Section located at 217 West Jones Street in Raleigh, North Carolina. Call (919) 707-8270 for an appointment to view the administrative record in the Hazardous Waste Section File Room. The draft Administrative Order in lieu of Post-Closure Permit and fact sheet can also be found online at the following location: <https://deq.nc.gov/news/events/public-notices-hearings>. Files are also accessible online at: <http://deq.nc.gov/about/divisions/waste-management/waste-management-rules-data/e-documents>

A summary of the modified Administrative Order in lieu of Post-Closure Permit follows:

An Administrative Order in lieu of Post-Closure Permit was issued to the Community Resource Exchange as the owner and Ingersoll Rand Company as the operator of the Former Schlage Lock Facility in 2011 to conduct post-closure care for the Closed Vapor Degreaser Room Trench and remediation activities for corrective action of contaminated media present at the facility where corrective measures are deemed necessary. Ground water contamination has been delineated and remedial activities consisting of a ground-water pump and treat system, a bioremediation system, and a soil vapor extraction system have been implemented at the site.

Due to the change of owner and operator status of the Administrative Order in lieu of Post-Closure Permit for the Former Schlage Lock Facility located in Rocky Mount, North Carolina, a draft modified Administrative Order has been prepared. The new Administrative Order will list Aspen Investments, Inc. as the current owner of the facility and Schlage Lock Company LLC as the operator of the facility.

All comments received during the public comment period or at the hearing will be considered in the decision regarding this modified Administrative Order in lieu of Post-Closure Permit. Comments received after the public comment period ends will not be considered. The statutory authority for calling the permit hearing is G.S. 130A-294(f). Applicable State rules are found in the North Carolina Hazardous Waste Management Rules 15A NCAC 13A .0105, .0109, and .0113. These rules adopt the requirements of the Federal Resource Conservation and Recovery Act as amended by the Hazardous and Solid Waste Amendments of 1984.

Anyone desiring additional information may contact Rob McDaniel at (919) 707-8215 or robert.mcdaniel@ncdenr.gov or at the address listed above.

**North Carolina Department of Environmental Quality
Division of Waste Management**

Re:	Owner:)	Administrative Order
	Aspen Investments, Inc.)	in Lieu of Post-Closure Permit
	Post Office Box 250)	
	Middlesex, NC 27557)	
)	
	Operator:)	
	Schlage Lock Company LLC)	Docket Number: 2011 – 084
	11819 North Pennsylvania Street)	
	Carmel, IN 46032)	Revision September, 2016
)	
	EPA ID # NCD 065 300 519)	

* * * *

[pages omitted]

IV. Section's Conclusions of Law and Determinations

Based upon the foregoing findings of fact and all other information available on the effective date of this Order, the Section concludes and determines that:

A. Definitions

1. "Hazardous wastes" shall mean those hazardous wastes defined in N.C.G.S. 130A-290(a)(8) and 40 CFR Part 261, adopted by reference in 15A NCAC 13A .0106(a) through .0106(e).
2. "Hazardous constituents" shall mean those constituents listed in Appendix VIII to 40 CFR Part 261, adopted by reference in 15A NCAC 13A .0106(e), or any constituent identified in Appendix IX to 40 CFR Part 264, adopted by reference in 15A NCAC 13A .0109(a), or under N.C.G.S. 130A-294.
3. "Landfill" shall have the meaning given in N.C.G.S. 130A-290(a)(16).
4. The term "Facility" shall have the meaning in 15A NCAC 13A .0102(b).
5. The terms "disposal" and "treatment" shall have the meanings given in N.C.G.S. 130A-290(a)(6) and (a)(42), respectively.
6. The term "Facility boundary" as used in this Order is the furthestmost extent of the property owned by Aspen located at 3551 North Wesleyan Boulevard, Rocky Mount, North Carolina. The exact dimensions of the Facility are indicated on the attached map. (See Attachment 2)
7. The term "Active Portion" shall have the meaning given in 40 CFR 260.10, adopted by reference in 15A NCAC .0102(b).
8. For the purposes of this Order, the term "Corrective Action" shall mean all activities, including activities conducted beyond the Facility boundary, that are proposed or implemented to facilitate assessment, monitoring, and active or passive remediation of releases of hazardous wastes or hazardous constituents to soil, groundwater, surface water, or the atmosphere associated with Hazardous Waste Management Units, SWMUs, and/or AOCs located at the Facility.
9. For the purposes of this Order, the term "Hazardous Waste Management Unit" (HWMU) includes any unit which has been used for the treatment, storage, or disposal of hazardous waste at any time.
10. For the purposes of this Order, the term "Solid Waste Management Unit" (SWMU) includes any unit which has been used for the treatment, storage, or disposal of solid waste at any time.

11. For the purposes of this Order, the term "Area of Concern" (AOC) includes any area having a probable release of a hazardous waste or hazardous constituent which is not from a solid waste management unit and is determined by the Department to pose a current or potential threat to human health or the environment. Such AOCs may require investigations and remedial action as required under Section 3005(c)(3) of RCRA and 40 CFR 270.32(b)(2) as adopted in 15A NCAC 13A .0113 to ensure adequate protection of human health and the environment.

B. Status of Schlage and Aspen

1. Schlage is a person as defined in N.C.G.S. 130A-290(a)(22).
2. Aspen is a person as defined in N.C.G.S. 130A-290(a)(22).
3. Schlage is an operator and Aspen is the owner of the Facility as those terms are defined in 40 CFR 260.10, as adopted by reference at 15 NCAC 13A .0102(b), and 40 CFR 270.2, adopted by reference at 15A NCAC 13A .0113(a). The Ingersoll Rand Company owned and operated the Facility at the time of the release(s) of hazardous waste. Community Resource Exchange purchased the Facility in 2002.
4. In 2007, the Community Resource Exchange sold the Facility to Belmont Commerce Park, LLC.
5. As of December 2013, Schlage is no longer a subsidiary of or otherwise affiliated with the Ingersoll Rand Company.
6. On October 1, 2015, Aspen became the owner of the Facility.
7. Aspen is listed on the most recent RCRA Part A Form as the owner of the Facility. Schlage is listed on the most recent RCRA Part A Form as an operator of the Facility.

C. Application of RCRA Standards

1. Pursuant to 40 CFR Part 261, Appendix VII, incorporated by reference in 15A NCAC 13A .0106(e), waste PCE is a listed hazardous waste assigned the EPA waste code of F001.
2. A "landfill" is also a "land disposal facility"; therefore, the owner and operator of a land disposal facility are subject to all the requirements for landfills set out in 40 CFR Part 265, Subparts G and H, adopted by reference in 15A NCAC 13A .0110(g) and (h).
3. Additionally, 40 CFR 270.1(c), adopted by reference in 15A NCAC 13A .0113(a), requires that owners and operators of landfills that certify closure after January 26,

* * * *

[pages omitted]



B-533
PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

MICHAEL SCOTT
Director

December 5, 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gladys Thomas
Vice President, EHS, Remediation and Real Estate
Allegion
11819 North Pennsylvania Street
Carmel, Indiana 46032

Mr. William A. Fassnacht
Aspen Investments, Inc.
Post Office Box 250
Middlesex, North Carolina 27557

Re: Issuance of Modified Administrative Order in Lieu of Post-Closure Permit
Former Schlage Lock Facility
EPA ID: NCD 065 300 519

Dear Ms. Thomas and Mr. Fassnacht:

Please find the signed original copy of the modified Federal Resource Conservation and Recovery Act (RCRA) Administrative Order in Lieu of Post-Closure Permit for the Former Schlage Lock Facility. This Administrative Order in Lieu of Post-Closure Permit identifies specific management practices that may be implemented in accordance with the North Carolina Hazardous Waste Management Rules. The enclosed Administrative Order in Lieu of Post-Closure Permit will constitute the RCRA permit for the Former Schlage Lock Facility.

If you have any questions, please contact Rob McDaniel at (919) 707-8215 or robert.mcdaniel@ncdenr.gov.

Sincerely,

Harold A. McCarty, Branch Head
Facility Management Branch
Hazardous Waste Section

Enclosure: Administrative Order in Lieu of Post-Closure Permit

ec: David W. Combs, Mayor of Rocky Mount
Charles W. Penny, Rocky Mount City Manager
Pamela O. Casey, Rocky Mount City Clerk
Mike Varnell, Rocky Mount Fire Chief
James Moore, Rocky Mount Chief of Police
Zee Lamb, Nash County Manager
William W. Hill, Jr., Nash County Health Director
Robert Hunt, Nash County Environmental Health
Janice Evans, Clerk to the Board of the County Commissioners
Keith Stone, Nash County Sheriff
Donald Burke
Harold A. McCarty
Robert C. McDaniel

**North Carolina Department of Environmental Quality
Division of Waste Management**

Re:	Owner:)	Administrative Order
	Aspen Investments, Inc.)	in Lieu of Post-Closure Permit
	Post Office Box 250)	
	Middlesex, NC 27557)	
)	
	Operator:)	
	Schlage Lock Company LLC)	Docket Number: 2011 – 084
	11819 North Pennsylvania Street)	
	Carmel, IN 46032)	Revision November, 2016
)	
	EPA ID # NCD 065 300 519)	

* * * *

[pages omitted]

IV. Section's Conclusions of Law and Determinations

Based upon the foregoing findings of fact and all other information available on the effective date of this Order, the Section concludes and determines that:

A. Definitions

1. "Hazardous wastes" shall mean those hazardous wastes defined in N.C.G.S. 130A-290(a)(8) and 40 CFR Part 261, adopted by reference in 15A NCAC 13A .0106(a) through .0106(e).
2. "Hazardous constituents" shall mean those constituents listed in Appendix VIII to 40 CFR Part 261, adopted by reference in 15A NCAC 13A .0106(e), or any constituent identified in Appendix IX to 40 CFR Part 264, adopted by reference in 15A NCAC 13A .0109(a), or under N.C.G.S. 130A-294.
3. "Landfill" shall have the meaning given in N.C.G.S. 130A-290(a)(16).
4. The term "Facility" shall have the meaning in 15A NCAC 13A .0102(b).
5. The terms "disposal" and "treatment" shall have the meanings given in N.C.G.S. 130A-290(a)(6) and (a)(42), respectively.
6. The term "Facility boundary" as used in this Order is the furthestmost extent of the property owned by Aspen located at 3551 North Wesleyan Boulevard, Rocky Mount, North Carolina. The exact dimensions of the Facility are indicated on the attached map. (See Attachment 2)
7. The term "Active Portion" shall have the meaning given in 40 CFR 260.10, adopted by reference in 15A NCAC .0102(b).
8. For the purposes of this Order, the term "Corrective Action" shall mean all activities, including activities conducted beyond the Facility boundary, that are proposed or implemented to facilitate assessment, monitoring, and active or passive remediation of releases of hazardous wastes or hazardous constituents to soil, groundwater, surface water, or the atmosphere associated with Hazardous Waste Management Units, SWMUs, and/or AOCs located at the Facility.
9. For the purposes of this Order, the term "Hazardous Waste Management Unit" (HWMU) includes any unit which has been used for the treatment, storage, or disposal of hazardous waste at any time.
10. For the purposes of this Order, the term "Solid Waste Management Unit" (SWMU) includes any unit which has been used for the treatment, storage, or disposal of solid waste at any time.

11. For the purposes of this Order, the term "Area of Concern" (AOC) includes any area having a probable release of a hazardous waste or hazardous constituent which is not from a solid waste management unit and is determined by the Department to pose a current or potential threat to human health or the environment. Such AOCs may require investigations and remedial action as required under Section 3005(c)(3) of RCRA and 40 CFR 270.32(b)(2) as adopted in 15A NCAC 13A .0113 to ensure adequate protection of human health and the environment.

B. Status of Schlage and Aspen

1. Schlage is a person as defined in N.C.G.S. 130A-290(a)(22).
2. Aspen is a person as defined in N.C.G.S. 130A-290(a)(22).
3. Schlage is an operator and Aspen is the owner of the Facility as those terms are defined in 40 CFR 260.10, as adopted by reference at 15 NCAC 13A .0102(b), and 40 CFR 270.2, adopted by reference at 15A NCAC 13A .0113(a). The Ingersoll Rand Company owned and operated the Facility at the time of the release(s) of hazardous waste. Community Resource Exchange purchased the Facility in 2002.
4. In 2007, the Community Resource Exchange sold the Facility to Belmont Commerce Park, LLC.
5. As of December 2013, Schlage is no longer a subsidiary of or otherwise affiliated with the Ingersoll Rand Company.
6. On October 1, 2015, Aspen became the owner of the Facility.
7. Aspen is listed on the most recent RCRA Part A Form as the owner of the Facility. Schlage is listed on the most recent RCRA Part A Form as an operator of the Facility.

C. Application of RCRA Standards

1. Pursuant to 40 CFR Part 261, Appendix VII, incorporated by reference in 15A NCAC 13A .0106(e), waste PCE is a listed hazardous waste assigned the EPA waste code of F001.
2. A "landfill" is also a "land disposal facility"; therefore, the owner and operator of a land disposal facility are subject to all the requirements for landfills set out in 40 CFR Part 265, Subparts G and H, adopted by reference in 15A NCAC 13A .0110(g) and (h).
3. Additionally, 40 CFR 270.1(c), adopted by reference in 15A NCAC 13A .0113(a), requires that owners and operators of landfills that certify closure after January 26,

* * * *

[pages omitted]

FOR THE NORTH CAROLINA DEPARTMENT
OF ENVIRONMENTAL QUALITY

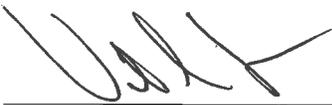


Julie S. Woosley, Chief
Hazardous Waste Section
Division of Waste Management

12/1/16

date signed

FOR ASPEN INVESTMENTS, INC.



William A. Fassnacht
Chief Operating Officer
Aspen Investments, Inc.

11/26/2016

date signed

FOR SCHLAGE LOCK COMPANY LLC



Jeffrey Braun
Senior Vice President and General Counsel
Schlage Lock Company LLC

11/16/16

date signed

Exhibit 27(b)(iii)

Original Post-Closure Order, dated 08 Dec. 2011

- * Operator determination cites 130A-290(a)(21), and the most recent Part A.

- * Original Order is signed by the HWS Chief who signed the August 2013 Directive (see Exhibit 11), which does not use the 130A-290(a)(21) operator determination cited in this Order and thirteen other similar orders the same HWS Chief signed over the period of 2009 to 2013, both before and after she signed the August 2013 Directive (see Figure 1). Counter to the fourteen orders that she signed, the August 2013 Directive cites a federal CERCLA case and 40 CFR 260.10.

File Room Document Transmittal Sheet

Your Name: Rob McDaniel
 EPA ID: N C D 0 6 5 3 0 0 5 1 9
 Facility Name: Former Schlage Lock Facility
 Document Group: Permit (P)
 Document Type: Alternative to Post-Closure Permitting (APC)
 Description: Administrative Order in Lieu of Post Closure Permit for the Former Schlage Lock Facility.
 Date of Doc: 12/12/2011
 Author of Doc: Harold A. McCarty

File Room Use Only

NCD065300519

Date Recieved by File Room:

Month	Day	Year
1	13	12
1	13	12

Scanner's Initials: RKR

Date Scanned:



North Carolina Department of Environment and Natural Resources
Division of Waste Management

Beverly Eaves Perdue
Governor

Dexter R. Matthews
Director

Dee Freeman
Secretary

December 12, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David Sordi, P.E.
Manager, Environmental Engineering
IR Corporate Center
Post Office Box 389
722 Davis Hill Road
Center Conway, NH 03813

Carlton E. Harlow, President
Community Resource Exchange
Post Office Box 8851
3551 North Wesleyan Boulevard
Rocky Mount, NC 27804

Re: Former Schlage Lock Facility
Rocky Mount, North Carolina
NCD 065 300 519

Dear Mr. Sordi and Mr. Harlow:

Please find the signed original copy of the Federal Resource Conservation and Recovery Act (RCRA) Administrative Order in lieu of Post-Closure Permit for the Former Schlage Lock Facility. This Administrative Order in lieu of Post-Closure Permit identifies specific management practices that may be implemented in accordance with the North Carolina Hazardous Waste Management Rules. The enclosed Administrative Order in lieu of Post-Closure Permit will constitute the RCRA permit for the Former Schlage Lock Facility.

If you have any questions, please contact Rob McDaniel at (919) 707 - 8215.

Sincerely,


Harold A. McCarty, Branch Head
Facility Management Branch
Hazardous Waste Section

Enclosure: Administrative Order in lieu of Post-Closure Permit

cc: Jon D. Johnston, US EPA, Region 4
John Johnston, US EPA, Region 4
William Hunneke
Former Schlage Lock Facility's Mailing list

rc: Harold A. McCarty *BmC*
Robert C. McDaniel *RmC*

* * * *

[pages omitted]

IV. Conclusions of Law and Determinations

Based upon the foregoing stipulations of fact and all other information available on the effective date of this Order, the Section concludes and determines that:

A. Definitions

1. "Hazardous wastes" shall mean those hazardous wastes defined in N.C.G.S. 130A-290(a)(8) and 40 CFR Part 261, adopted by reference in 15A NCAC 13A .0106(a) through .0106(e).
2. "Hazardous constituents" shall mean those constituents listed in Appendix VIII to 40 CFR Part 261, adopted by reference in 15A NCAC 13A .0106(e), or any constituent identified in Appendix IX to 40 CFR Part 264, adopted by reference in 15A NCAC 13A .0109(a), or under N.C.G.S. 130A-294.
3. "Landfill" shall have the meaning given in N.C.G.S. 130A-290(a)(16).
4. The term "Facility" shall have the meaning given in 40 CFR 260.10, adopted by reference in 15A NCAC .0102(b).
5. The terms "disposal" and "treatment" shall have the meanings given in N.C.G.S. 130A-290(a)(6) and (a)(42), respectively.
6. The term "Facility boundary" as used in this Order is the furthestmost extent of the property owned and used by Community Resource Exchange. The exact dimensions of the property are indicated on the attached Map. (See Attachment 3)
7. The term "Active Portion" shall have the meaning given in 40 CFR 260.10, adopted by reference in 15A NCAC .0102(b).
8. For the purposes of this Order, the term "Corrective Action" shall mean all activities, including activities conducted beyond the facility boundary, that are proposed or implemented to facilitate assessment, monitoring, and active or passive remediation of releases of hazardous waste or hazardous constituents to soil, groundwater, surface water, or the atmosphere associated with Hazardous Waste Management Units (HWMUs), Solid Waste Management Units (SWMUs), and/or Areas of Concern (AOCs) located at the facility.
9. For the purposes of this Order, the term "Hazardous Waste Management Unit" (HWMU) includes any unit which has been used for the treatment, storage, or disposal of hazardous waste at any time.
10. For the purposes of this Order, the term "Solid Waste Management Unit" (SWMU) includes any unit which has been used for the treatment, storage, or disposal of solid waste at any time.

11. For the purposes of this Order, the term "Area of Concern" (AOC) includes any area having a probable release of a hazardous waste or hazardous constituent which is not from a solid waste management unit and is determined by the Department to pose a current or potential threat to human health or the environment. Such areas of concern may require investigations and remedial action as required under Section 3005(c)(3) of the Resource Conservation and Recovery Act and 40 CFR 270.32(b)(2) as adopted in 15A NCAC 13A .0013 in order to ensure adequate protection of human health and the environment.

B. Status of Community Resource Exchange and Ingersoll Rand Company

1. Ingersoll Rand Company is a person as defined in N.C.G.S. 130A-290(a)(22).
2. Community Resource Exchange is a person as defined in N.C.G.S. 130A-290(a)(22).
3. Ingersoll Rand Company is the operator and Community Resource Exchange is the owner as defined in N.C.G.S. 130A-290(a)(21). Ingersoll Rand Company owned and operated the Facility at the time of the releases of hazardous waste. Community Resource Exchange purchased the site in 2002.
4. Community Resource Exchange is listed on the most recent RCRA Part A as the property owner and, therefore, is an owner as defined in N.C.G.S. 130A-290(a)(21).

C. Application of RCRA Standards

1. Pursuant to 40 CFR Part 261, Appendix VII, incorporated by reference in 15A NCAC 13A .0106(e), tetrachloroethylene is a listed hazardous waste assigned the EPA waste code of F001.
2. A "landfill" is also a "land disposal facility"; therefore the owner and operator are subject to all the requirements for landfills set out in 40 CFR Part 265, Subparts G and H, adopted by reference in 15A NCAC 13A .0110(g) and (h).
3. Additionally, 40 CFR 270.1(c), adopted by reference in 15A NCAC 13A .0113(a), requires that owners and operators of landfills that certify closure after January 26, 1983 must have post-closure permits, unless it demonstrates closure by removal (i.e., clean closure). Based on the foregoing and pursuant to 40 CFR 270.1(c), incorporated by reference in 15A NCAC 13A .0113(a), Ingersoll Rand Company as operator and Community Resource Exchange as owner are required to have a post-closure permit for the Facility and agrees that a) Ingersoll

* * * *

[pages omitted]

FOR THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Elizabeth W. Cannon
Elizabeth W. Cannon, Chief
Hazardous Waste Section
Division of Waste Management

12-8-11
date signed

FOR COMMUNITY RESOURCE EXCHANGE

Carlton E. Harlow
Carlton E. Harlow, President
Community Resource Exchange

10-18-11
date signed

FOR INGERSOLL RAND COMPANY

David Sordi
David Sordi, Senior Manager
Environmental Engineering
Ingersoll Rand Company

KEVIN TUBB, Director
11-28-11
date signed
Global Environmental Affairs

Exhibit 27(c)

Section's Proposed Modification to Existing Post-Closure Order for facility identified with EPA ID No. NCD057451270 (Jan. 2017).

- * Proposed to change the 130A-290(a)(21) "operator" determination from the original 2012 Post-Closure Order for this facility to 40 CFR 260.10 and 270.2 (proposed to be issued to the entity identified as "operator" in the most recent Part A for the facility).

Included as Exhibit 30(a).

- * *But see* Exhibit 30(b)–(d) (Section withdrew this attempted change, and instead conducted a five-year review of the original order (*retaining* the 130A-290(a)(21) operator determination), *despite having made the same modifications to the operator determination* in the Post-Closure Order for Schlage Lock that the Section issued in December 2016 (*see* Exhibit 27(b), above).

Exhibit 27(d)

Section Immediate Action Notice of Violation
Issued to Loren Lanter in connection with the facility identified with
EPA ID No. NCD 070 619 663 (June 15, 2017).

- * Current HWS Chief cites **40 CFR 124.2** definition of “owner or operator,” which uses exactly the same language used in the 40 CFR 270.2 definition of that term.

- * *But see* Exhibit 30(b)–(d) (Section withdrew an attempted change of an existing Post-Closure Order from the original 130A-290(a)(21) operator determination to definition of “operator” in 40 CFR 260.10 and “owner or operator” in 40 CFR 270.2, and instead conducted a five-year review of the original order (*retaining* the **130A-290(a)(21)** operator determination).

- * *See also* Exhibit 8(d) (Section emailing draft Post-Closure Order for this same facility to Loren Lanter in 2013, which includes a **130A-290(a)(21)** operator determination).



Waste Management
ENVIRONMENTAL QUALITY

B-552
ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

MICHAEL SCOTT
Director

June 15, 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IMMEDIATE ACTION
NOTICE OF VIOLATION
Docket # 2017-052

Mr. Loren Lanter

Brisco, Inc.
Mailing: 251 Buckeye Cove Rd.
Swannanoa, NC 28778

SUBJECT: Immediate Action Notice of Violation
Former - Asheville Dyeing & Finishing
850 Warren Wilson College Road
Swannanoa, NC 28778
EPA ID#: NCD070619663
Buncombe County

Dear Mr. Loren Lanter:

On December 18, 1980, the State of North Carolina, Hazardous Waste Section (Section) was authorized to operate the State Resource Conservation and Recovery Act (RCRA) Hazardous Waste Program under the Solid Waste Management Act (Act), N.C.G.S. 130A, Article 9 and rules promulgated thereto at 15A NCAC 13A (Rules), in lieu of the Federal RCRA program.

On May 24, 2017, Jeff Menzel and Mike Williford with the Division of Waste Management, Hazardous Waste Section, conducted a compliance evaluation inspection at the property located at 850 Warren Wilson College Road Swannanoa, NC 28778, Buncombe County.

Statement of Facts Related to the Compliance Inspection

Asheville Dyeing and Finishing (AD&F) historically operated as an industrial dry cleaner using tetrachloroethylene (PCE). AD&F generated spent PCE from dry cleaning operations and accumulated the hazardous waste in an underground storage tank (UST). In 1985 AD&F removed the PCE waste UST, as well as a PCE product UST. Soil samples were collected from the bottom of the tank pits and chlorinated solvents were discovered. In addition, chlorinated solvents were detected in another area of the property in 1988, after additional soil samples were collected from an area where an alleged spill of PCE occurred.

On August 29, 1990, an Administrative Order on Consent (AOC), Docket # 1989-249, was finalized between AD&F and the Section.

On May 24, 2017, Jeff Menzel and Mike Williford with the Division of Waste Management, Hazardous Waste Section, conducted a compliance evaluation investigation at the property located at 850 Warren Wilson College Road Swannanoa, NC 28778, Buncombe County. Loren Lanter, representing Brisco, Inc., met Section staff at the site to provide access to the property. Mr. Greg Lentz, a current tenant of the property, was also present during the inspection. After an initial meeting the inspectors were allowed to inspect the property unescorted. During the inspection (24) twenty-four 55-gallon containers were observed on the southwest portion of the property, being stored behind several large piles of saw dust. The containers were staged on a concrete pad. Twenty-three containers were turned upside down while one white poly container was turned upright. Inspectors were able to confirm that the poly container was partially full of an unknown liquid. Inspectors did not disturb the containers but did observe two containers labeled with the words, "Methyl Ethyl Ketone." Inspectors then made attempts to contact Mr. Greg Lentz via cell phone to see if he was still present on the property. Inspectors also spoke with other employees working within the main building to determine the contents and owner of the twenty-four containers described above. Per personnel on site, the containers were the responsibility of Smokey Mountain Pallets, who has since moved their operations to another site and were no longer conducting operations at 850 Warren Wilson Road.

On June 6, 2017, Jeff Menzel and Richard Concepcion with the Division of Waste Management, Hazardous Waste Section revisited the site to assess the abandoned drums and determine how many of the twenty-four containers were holding material. It was determined that at least seven of the containers contained unknown liquids. Section staff could not determine the integrity of the containers nor the presence of any spilled material because the containers were staged closely together and the concrete pad around the containers was covered with a dark colored residue, which is believed to be originating from the decaying wood saw dust piles. Inspectors then questioned staff at Smokey Mountain Pallets who stated that the twenty-four 55-gallon containers did not belong to them.

On March 5, 2015, Spring Allen with the Hazardous Waste Section conducted a routine compliance inspection at the site and noted the following statement in her inspection report: *"The current owner of the property is BRISCO. They plan to move their business and expand, however they have been hesitant to begin operations at the site due to the issues of the responsible party. The north-west side of the property is currently leased to a pallet manufacturer. The remainder of the building is being used for storage. Storage includes 83 55- gallon containers holding non-HW coolant from BRISCO. One (1) container is labeled MEK and one (1) is labeled Toluene with used coolant."*

On July 28, 2016, the Hazardous Waste Section received a report from Adam G. Sowatzka, acting attorney for WASCO, that there were leaking containers within the building at 850 Warren Wilson Road. Section staff immediately contacted Loren Lanter with Brisco, Inc. and advised him, to immediately assess the situation, clean-up any spilled material and secure the 83 containers. Additionally, staff required Brisco, Inc. to make a waste determination for the collection of containers and properly dispose of any material deemed to be waste. Brisco, Inc. was also required to provide documentation that waste had properly been disposed of via manifest tracking. On August 10, 2016, HWS staff received a copy of Non-Hazardous Waste Manifest No.327168 documenting that Holsten Environmental had collected 2375 gallons, or 63 containers, of oily wastewater for recycling. It appears that the waste was determined to be non-hazardous based on generator knowledge alone.

On June 7, 2017, Section staff requested via email that Brisco, Inc. take an inventory of the 24 containers on the southwest side of the property and if any container was found to be leaking it must be over packed and secured. Staff also required that a waste determination be performed on the containers and this information should be relayed to Section staff before any of the containers are moved off the property. Later that same day the inspector received the following email message from Loren Lanter: *"We took a look at the barrels back near the saw-dust pile. They are all empty that we had set there to crush and haul away later – we had just not yet done that. Any of those barrels that aren't empty now would contain only rain water – no waste."*

Based on the visual inspection of the twenty-four 55-gallon containers, conducted on May 24, 2017, and June 6, 2017, the containers found to contain an unknown liquid did not appear to be deteriorated in such a manner that would allow rainwater to enter the containers. At least six of the containers holding an unknown liquid were turned upside down and there were not any obvious cracks/holes observed on any of the seven containers holding an unknown liquid.

Statutory and Regulatory Background

- A. 40 CFR 261.1(a), adopted by reference at 15A NCAC 13A .0106(a), identifies those solid wastes which are subject to regulation as hazardous wastes under Parts 262 through 265 and Parts 270, 271, and 124 of this Chapter and which are subject to the notification requirements of Section 3010 of RCRA.
- B. 40 CFR 261.2(b), adopted by reference at 15A NCAC 13A .0106(a), states that materials are solid waste if they are abandoned by being [1] disposed of; or [2] burned or incinerated; or [3] accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.
- C. 40 CFR 261.3(a), adopted by reference at 15A NCAC 13A .0106(a), states that a solid waste, as defined in Section 261.2 is a hazardous waste if:
 - 1. It is not excluded from regulation as a hazardous waste under Section 261.4(b); and
 - 2. It meets any of the following criteria:
 - i. It exhibits any of the characteristics of hazardous waste identified in Subpart C.
 - ii. It is listed in Subpart D and has not been excluded from the lists in Subpart D under Sections 260.20, and 260.22 of this chapter.
 - iii. It is a mixture of solid waste and hazardous waste that is listed in Subpart D solely because it exhibits one or more of the characteristics of hazardous waste identified in Subpart C, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in Subpart C.

- iv. It is a mixture of solid waste and one or more hazardous wastes listed in Subpart D and has not been excluded from this paragraph under Sections 260.20 and 260.22 of this chapter.
- D. NCGS 130A-290(6), defines "Disposal" as the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwater.
- E. 40 CFR 124.2, adopted by reference at 15A NCAC 13A .0105(a) defines "Owner" or "Operator" as the owner or operator of any "facility or activity" subject to regulation under the RCRA program.
- F. NCGS 130A-290(22), defines "Person" as an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.
- G. NCGS 130A-290(41), defines "Storage" as the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.
- H. NCGS 130A-290(42), defines "Treatment" as means 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 render such waste non-hazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it non-hazardous.
- I. 40 CFR 260.10, adopted by reference in 15A NCAC .0102(b), defines a "Generator" as "any person, by site, whose act or process produces hazardous waste identified or listed in part 261 or whose act first causes a hazardous waste to become subject to regulation."

Violations Requiring Immediate Action

It is the determination of the Section that the number of containers identified as unknown, abandoned, or no longer needed, and the potential for a release of unknown waste to the ground, by Brisco, Inc., constitutes the storage and the disposal of solid/hazardous waste subject to all applicable requirements of 40 CFR Part 261 through Part 265 and Part 270, incorporated by reference in 15A NCAC 13A .0106 through .0110 and .0113.

- 1. 40 CFR 262.11, adopted by reference at 15A NCAC 13A .0107(a), requires that a person who generates a solid waste, as defined in 40 CFR 261.2, must determine if the waste is a hazardous waste using the following method:
 - a. He should first determine if the waste is excluded from regulation under 40 CFR 261.4.

- b. He must then determine if the waste is listed as a hazardous waste in Subpart D of 40 CFR Part 261.
- c. If the waste is not listed as a hazardous waste in Subpart D of 40 CFR Part 261, he must determine whether the waste is identified in Subpart C of 40 CFR Part 261 by either:
 - i. Testing the waste according to the methods set forth in Subpart C of 40 CFR Part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or
 - ii. Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

Brisco, Inc. is in violation of 40 CFR 262.11, adopted by reference at 15A NCAC 13A .0107(a), in that solid waste was abandoned, stored, and disposed of on the property as defined in 40 CFR 261.2 and a hazardous waste determination has not been made by the generator.

2. 15A NCAC 13A .0109(a), requires that any person who treats, stores, or disposes of hazardous waste shall comply with the requirements set forth in this section. The treatment, storage or disposal of hazardous waste is prohibited except as provided in 40 CFR Parts 264 and 265, adopted by reference in 15A NCAC 13A .0109 and .0110.

Brisco, Inc. is in violation of this regulation in that hazardous waste may have been abandoned, stored, and disposed without complying with the requirements set forth in 40 CFR Parts 264 and 265, adopted by reference in 15A NCAC 13A .0109 and .0110.

COMPLIANCE SCHEDULE

Within 30-days of receiving this Notice of Violation, Brisco, Inc. shall comply with the following requirements:

1. Comply with 40 CFR 262.11, adopted by reference at 15A NCAC 13A .0107(a). Brisco, Inc. must perform an assessment and inventory of the contents of the containers identified as unknown, no longer needed, or abandoned on the property. The contents of each container must be identified through analytical testing or through using generator knowledge (e.g. through a description of the process which generated the waste) and must accompany the inventory. No container or contents of the containers may be disposed of without prior approval from this Section. All leaking containers must immediately be addressed to stop the leaking. Any containers that are in poor condition must be over packed or transferred into a container that is in good condition. A hazardous waste determination must be performed for all containers holding waste liquid within 30 days of receipt of this Notice.
2. Brisco, Inc. must perform an assessment to determine if waste has leaked from any of the twenty-four 55-gallon containers being stored on the southwest portion of the property. If waste is found, or suspected, to have leaked from any of the containers, a comprehensive assessment will be required

to determine the extent of contaminated soil and/or groundwater potentially impacted around the concrete pad. All waste residues identified on the concrete pad must also be cleaned and containerized. This assessment must be supervised by a qualified professional. A hazardous waste determination must be completed on all waste residues removed from the concrete pad, along with any soil excavated in the areas of concern. Contaminated residues and soil must be properly managed and disposed. Disposal options will be determined by the results of the hazardous waste determination. All requirements outlined above must be completed within 90-days of receipt of this Notice.

Prior to initiating any corrective actions, please contact Mr. Richard Concepcion, Environmental Chemist (Phone: 828-578-6927 Email: Richard.Concepcion@ncdenr.gov), for assistance and instructions on how to proceed with the site assessment, hazardous waste determination, and final disposal. Failure by Brisco, Inc. to complete an effective site remediation may subject the site to additional requirements including closure plans, financial assurance for closure/post-closure, and groundwater monitoring.

3. Comply with 40 CFR 262.12, adopted by reference at 15A NCAC 13A .0107(a). Prior to shipment of any hazardous waste, an EPA Identification Number must be obtained for this site. You may contact Ms. Melodi Deaver with this office at (919) 707-8204 to make provisions for obtaining an EPA ID number, if necessary, and updating the facility's hazardous waste generator status and contact information.
4. Comply with 15A NCAC 13A .0109(a). Brisco, Inc. shall no longer store or dispose of hazardous waste without full compliance with this section. Pending shipment of hazardous waste for proper disposal, Brisco, Inc. must comply with 40 CFR 262.34(a), adopted by reference at 15A NCAC 13A .0107(c), which states that:
 - a. If the waste is placed in containers the generator must comply with Subpart I of 40 CFR Part 265 or if the waste is placed in tanks, the generator must comply with Subpart J of 40 CFR Part 265, except 265.197(c) and 265.200. No waste piles are allowed.
 - b. The date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.
 - c. While being accumulated on-site, each container and tank must be labeled or marked clearly with the words, "Hazardous Waste"; and
 - d. The generator must comply with the requirements for owners or operators in Subparts C and D in 40 CFR Part 265, Section 265.16 and 268.7(a)(4).

Potential Consequences of Failure to Comply

You must comply with each requirement of this Immediate Action Notice of Violation (IANOV); however, compliance will not divest the Section of its authority to issue an administrative penalty for the violations cited in this IANOV and additional violations cited in a subsequent Compliance Order with Administrative Penalty. In accordance with NCGS 130A-22(a), the penalty shall not exceed thirty two thousand five hundred dollars (\$32,500.00) per day in the case of a first violation. Each day of a continuing violation shall constitute a separate violation.

Pursuant to NCGS 130A-18, a violation of any provision of the Act or the Rules may also result in the Section initiating an action for injunctive relief. If an injunction is obtained, you will be subject to both the civil and criminal contempt powers of the North Carolina General Courts of Justice.

Questions regarding proper waste determination procedures and remediation should be directed to Mr. Richard Concepcion, Environmental Chemist, at 828-578-6927 or Richard.Concepcion@ncdenr.gov.

If you should have questions concerning the issuance of this IANOV, you may contact Mr. Jeff Menzel, Environmental Senior Specialist, at 828-419-5034 or Jeff.Menzel@ncdenr.gov.

Sincerely,



Julie S. Woosley, Chief
Hazardous Waste Section

cc: Central Files
Richard Concepcion
Sean Morris
Brent Burch