



## **REGION 3**

PHILADELPHIA, PA 19103

### **VIA ELECTRONIC MAIL**

Carl Spadaro  
Environmental General Manager  
MAX Environmental Technologies, Inc.  
McCandless Corporate Center  
5700 Corporate Drive, Suite 425  
Pittsburgh, Pennsylvania 15237

**Re: Notice of Violations and Opportunity to Confer**

- 1) Facility: Yukon, Pennsylvania  
NPDES Permit No. PA0027715  
RCRA Subtitle C Permit No. PAD004835146  
RCRA Subtitle D Permit No. 301071**
- 2) Facility: Bulger, Pennsylvania  
NPDES Permit No. PA0044326**

Dear Mr. Spadaro:

This letter is in reference to an ongoing investigation the United States Environmental Protection Agency, Region 3, ("EPA" or "Agency") is conducting with regard to compliance with the Commonwealth of Pennsylvania National Pollutant Discharge Elimination System ("NPDES") Permit No. PA0027715 (hereinafter the "Yukon CWA Permit"), the Commonwealth of Pennsylvania Hazardous Waste Storage and Treatment Permit No. PAD004835146 (hereinafter "RCRA Subtitle C Permit"), and the Commonwealth of Pennsylvania Solid Waste Permit No. 301071 (hereinafter "RCRA Subtitle D Permit") by MAX Environmental Technologies, Inc. (hereinafter "MAX" or "Permittee"), with respect to the Yukon Plant located at 233 Max Lane, Yukon, Pennsylvania (hereinafter the "Yukon Facility"), and with regard to MAX's compliance with NPDES Permit No. PA0044326 (hereinafter the "Bulger CWA Permit"), with respect to the Bulger Plant located in Smith Township, Washington County, Pennsylvania ("Bulger Facility").

The Yukon CWA Permit regulates discharges from the Permittee's Wastewater Treatment Plant (WWTP) located at the Yukon Facility into Sewickley Creek in accordance with Section 301 of the Clean Water Act ("CWA"), 33 U.S.C. § 1311. The RCRA Subtitle C Permit regulates the management, treatment, and storage of hazardous waste at the Yukon Facility by the Permittee in accordance with Subtitle C of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6921 – 6939g, the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the

federally authorized Commonwealth of Pennsylvania Hazardous Waste Management Regulations (“PaHWMR”). The RCRA Subtitle D Permit regulates the residual solid waste disposal area of the Yukon Facility in accordance with Subtitle D of RCRA, 42 U.S.C. § 6941 – 6949a, the federal non-hazardous waste regulations set forth at 40 C.F.R. Parts 239-259, and the federally authorized Commonwealth of Pennsylvania Solid Waste Management program. EPA has not determined the extent and nature of any RCRA Subtitle D Permit violation as of the date of this letter, but EPA reserves the right to allege any such RCRA Subtitle D Permit violation as deemed appropriate at such time.

The Bulger CWA Permit regulates discharges from the Permittee’s WWTP located at the Bulger Facility into Raccoon Creek, Little Raccoon Run, and unnamed tributaries to Little Raccoon Run in accordance with Section 301 of the CWA, 33 U.S.C. § 1311.

On March 20-24, 2023, EPA representatives conducted an inspection (the “Inspection”) of the Yukon Facility. The primary purpose of the Inspection was to determine MAX’s compliance with the requirements of the Yukon CWA Permit, and to determine MAX’s compliance with RCRA and its RCRA Subtitle C and D Permits. Following the Inspection, by emails dated July 24, 2023 and resent on September 15, 2023, EPA provided a copy of the inspection report documenting the findings of the Inspection (the Inspection Report) to the Permittee. On October 27, 2023, MAX provided a response to the EPA concerning the findings of the Inspection Report.

In addition, EPA conducted a record review of MAX’s compliance with the Bulger CWA Permit. Specifically, EPA reviewed the finding of the Industrial Waste Compliance Inspection Report from the Pennsylvania Department of Environmental Protection (“PADEP”) dated May 16, 2023 and information available in EPA’s Integrated Compliance Information System (ICIS).

The information currently available to the EPA suggests that the Permittee may be in violation of the requirements of the CWA and RCRA and their implementing regulations. By this letter, the EPA is extending the Permittee an opportunity to advise the Agency of any additional information related to the facts and circumstances of the alleged violations that MAX would like the EPA to consider.

Prior to determining whether to issue an Administrative Complaint and Compliance Order, EPA is providing representatives of MAX with the opportunity to meet and/or confer with EPA representatives to provide EPA with any additional relevant information and "show cause" as to any reasons why EPA should not file an Administrative Complaint for the alleged violations identified and described below. EPA is also inviting MAX to discuss with EPA the possibility of entering into a settlement of the alleged violations without the need for litigation.

#### **A. Alleged CWA Violations Identified by EPA**

Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of any pollutant from a point source to a water of the United States, except in compliance with, among other things, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), the Commonwealth of Pennsylvania has been authorized since 1978

to issue NPDES permits under Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

Pursuant to the CWA, the EPA can seek compliance with the Permit and penalties for noncompliance with the Permit through a civil action in federal district court or an administrative action, which may include a complaint for civil penalties, and/or an order for compliance. See Section 309 of the CWA, 33 U.S.C. § 1319 and see the 1995 Interim Clean Water Act Settlement Penalty Policy published by EPA in March 1995.

### **Allegation 1. Effluent Exceedances**

Part I.A. of the Yukon CWA Permit defines effluent limitations and monitoring requirements for Outfall 001 discharges. Based on the Discharge Monitoring Reports (DMRs) provided by the Permittee, the Yukon Facility has experienced the following exceedances from Outfall 001:

**Table 1. Yukon Facility Effluent Limit Exceedances (January 31, 2022 – July 31, 2023)**

Outfall #	Monitoring Period End Date	Parameter Name	DMR Value	Permit Limit	Units	Limit Type	% Exceeding Limit
001	7/31/2023	Cadmium, total [as Cd]	0.027	0.025	mg/L	MO AVG	8
001	2/28/2023	Nitrogen, ammonia total [as N]	20.63	18.9	mg/L	MO AVG	9
001	2/28/2023	Cadmium, total [as Cd]	0.109	0.05	mg/L	DAILY MX	118
001	2/28/2023	Cadmium, total [as Cd]	0.065	0.025	mg/L	MO AVG	160
001	2/28/2023	Zinc, total [as Zn]	1.91	0.19	mg/L	MO AVG	905
001	2/28/2023	Zinc, total [as Zn]	3.8	0.37	mg/L	DAILY MX	927
001	1/31/2023	Nitrogen, ammonia total [as N]	21.18	18.9	mg/L	MO AVG	12
001	12/31/2022	Nitrogen, ammonia total [as N]	20.53	18.9	mg/L	MO AVG	9
001	11/30/2022	Zinc, total [as Zn]	0.49	0.37	mg/L	DAILY MX	32

Outfall #	Monitoring Period End Date	Parameter Name	DMR Value	Permit Limit	Units	Limit Type	% Exceeding Limit
001	11/30/2022	Zinc, total [as Zn]	0.24	0.19	mg/L	MO AVG	26
001	9/30/2022	Zinc, total [as Zn]	0.43	0.19	mg/L	MO AVG	126
001	9/30/2022	Zinc, total [as Zn]	0.62	0.37	mg/L	DAILY MX	68
001	8/31/2022	Zinc, total [as Zn]	0.26	0.19	mg/L	MO AVG	37
001	8/31/2022	Zinc, total [as Zn]	0.48	0.37	mg/L	DAILY MX	30
001	3/31/2022	BOD, 5-day, 20 deg. C	195	140	mg/L	DAILY MX	39
001	3/31/2022	BOD, 5-day, 20 deg. C	62.15	37	mg/L	MO AVG	68
001	2/28/2022	BOD, 5-day, 20 deg. C	79.53	37	mg/L	MO AVG	115
001	1/31/2022	BOD, 5-day, 20 deg. C	106.93	37	mg/L	MO AVG	189
001	1/31/2022	BOD, 5-day, 20 deg. C	195	140	mg/L	DAILY MX	39
001	1/31/2022	Nitrogen, ammonia total [as N]	19.73	18.9	mg/L	MO AVG	4

In addition, Part A.1. of the Bulger CWA Permit defines effluent limitations and monitoring requirements for Outfall 101 discharges. Based on the DMRs provided by the Permittee, the Bulger Facility has experienced the following exceedances from Outfall 101:

**Table 2: Bulger Facility Effluent Limit Exceedances (September 30, 2021 – July 31, 2022)**

Outfall #	Monitoring Period End Date	Parameter Name	DMR Value (mg/L)	Permit Limit	Units	Limit Type	% Exceeding Limit
101	9/30/2021	Solids, total suspended	68	30	mg/L	Monthly Average	127
101	9/30/2021	Solids, total suspended	130	60	mg/L	Daily Max	117
101	7/31/2022	Aluminum, total [as Al]	0.938	0.750	mg/L	Daily Max	25

## **Allegation 2. Failure to Report Monitoring**

### **Missing DMRs**

Part III.B. of the Yukon CWA Permit states that “DMRs must be completed in accordance with [PA]DEP’s published DMR instructions (3800-FM-BCW0463). DMRs must be received by [PA]DEP no later than 28 days following the end of the monitoring period. DMRs are based on calendar reporting periods and must be received by [PA]DEP in accordance with the following schedule:

- Monthly DMRs must be received within 28 days following the end of each calendar month.
- Quarterly DMRs must be received within 28 days following the end of each calendar quarter, i.e., January 28, April 28, July 28, and October 28.
- Semiannual DMRs must be received within 28 days following the end of each calendar semiannual period, i.e., January 28 and July 28.
- Annual DMRs must be received by January 28, unless Part C of this permit requires otherwise.”

Part IV.B. of the Bulger CWA Permit states that “DMRs must be completed in accordance with [PA]DEP’s published DMR instructions (3800-FM-BCW0463). DMRs must be received by [PA]DEP no later than 28 days following the end of the monitoring period.”

According to EPA’s Enforcement and Compliance History Online (“ECHO”) website and ICIS database, there are 26 missing DMR’s for multiple dates and parameters at the Yukon Facility, and 20 late DMR’s for the Bulger Facility. Attachment A, enclosed hereto, displays missing or late records for both the Yukon and Bulger Facilities.

### **Unreported Sampling Results**

Part A, Footnote 3, of the Yukon CWA Permit states that “instantaneous maximum limitations are imposed to allow for a grab sample to be collected by the appropriate regulatory agency to determine compliance. The permittee is not required to monitor for the instantaneous maximum limitations. However, if grab samples are collected by the permittee, the results must be reported.”

During the Inspection, Inspectors determined that the Permittee was taking “process control” grab samples at Outfall 001 at the Yukon Facility and the Permittee was not reporting those analytical results on its DMRs. The Permittee took “process control” grab samples at Outfall 001 at the Yukon Facility on at least March 6, 2023, and October 19, 2022, and the sample results were not reported on the DMRs.

### **Allegation 3. Failure to Operate and Maintain Facility**

Part B.I.D. of the Yukon CWA Permit states, “The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes, but is not limited to, adequate laboratory controls including appropriate quality assurance procedures. This provision also includes the operation of backup auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit.”

Several systems were down for maintenance or repair at the time of the Inspection:

- (1) The facility staff was not using the pH adjustment tank in the on-site industrial wastewater treatment plant because the pH adjustment tank was out of service. Because the pH adjustment tank was out of service, facility staff limit the pH adjustment in the flocculant tank to approximately 9.5 pH units, knowing they do not have the capability to easily lower the pH to permit limits with the pH adjustment tank out of service.
- (2) The weir trough in the rectangular clarifier in the on-site industrial WWTP was full of holes and was not properly operated and maintained. In the on-site Industrial WWTP, solids in the wastewater are removed via a rectangular clarifier. The clarifier is equipped with a weir and trough which collects the treated wastewater and routes it to the next unit process. The weir and trough were observed with substantial leaks and not properly operated and maintained.
- (3) The Permittee was not using the neutralization tank at the Yukon Facility. Facility staff explained that the wastewater from the recycle water (6 pack) tanks is pumped into the on-site industrial WWTP with a semi portable pump and hose. The water is directed into the flocculant tank bypassing the neutralization tank. The neutralization tank, with the dosing of hydrogen peroxide, is used to control organics in the waste stream.

### **Allegation 4. Failure to Monitor**

Part I.B. of the Yukon CWA Permit requires the Permittee to monitor continuously for flow and pH at internal monitoring point (“IMP”) 101.

During the Inspection, Inspectors determined that the Permittee was monitoring pH at IMP 101 by pulling a grab sample immediately upon completing time composite samples instead of performing continuous monitoring for pH at IMP 101.

### **Allegation 5. Failure to Provide Training**

Part C.IV.E.1.f. of the Yukon CWA Permit states, in pertinent part, that “The permittee shall develop and implement a [preparedness, prevention, and contingency(“PPC”)] Plan in accordance with 25 Pa. Code § 91.34 following the guidance contained in [PA]DEP’s “Guidelines for the Development and Implementation of Environmental Emergency Response Plans” (DEP ID 400-2200-001), its NPDES-specific addendum and... the PPC Plan must include a plan for training employees and contractors on pollution prevention, [best management practices (“BMPs”)], and emergency response measures. This training must be conducted in accordance with paragraph C.4.c of this section.”

Part C.IV.C.4.c. of the Yukon CWA Permit states, in pertinent part, that the “Permittee shall conduct periodic training, no less than annually, and document the training on the Annual Report....”

During the record review phase of the Inspection, Inspectors determined that the employee training dated 8/31/22, 9/11/20, 9/16/20 - 9/17/20 and 10/5/22 did not include training on pollution prevention, BMPs and emergency response operations as required by the Yukon CWA Permit.

### **B. Alleged RCRA Violations Identified by EPA**

Effective January 30, 1986, and as revised on November 27, 2000, March 22, 2004 and June 29, 2009, EPA authorized the Commonwealth of Pennsylvania to administer PaHWMR in lieu of the federal hazardous waste management program, including certain provisions implementing the Hazardous and Solid Waste Amendments (“HSWA”) enacted on November 8, 1984 (Pub. Law No. 98-616), which amended Subtitle C of RCRA. The authorized provisions of the PaHWMR codified at 25 Pa. Code Chapters 260a – 266c, 266b, and 268c – 270a, thereby became requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a). See *51 Fed. Reg. 1791* (January 15, 1986), *65 Fed. Reg. 57734* (September 26, 2000), *69 Fed. Reg. 2674* (January 20, 2004) and *74 Fed. Reg. 19453* (April 29, 2009). The federally-authorized PaHWMR are available [online](#).

Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to take enforcement action whenever it determines that a person is in violation of any requirement of RCRA Subtitle C, EPA’s regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.

### **Allegation 1. Operation Without a Permit or Interim Status**

Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility. Even though MAX has a RCRA Subtitle C Permit, the permit authorizes only the management of certain hazardous waste expressly described in the RCRA Subtitle C Permit, which does not include F039 hazardous waste. MAX is a RCRA Large Quantity Generator.

Although MAX may have attempted to comply with the temporary (less than 90-day) accumulation exemption to the permit requirement found in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34 (2005)<sup>1</sup> with exceptions not relevant herein, MAX did not qualify for such exemption because of its failure to comply with all of the applicable exemption conditions for its management of F039 hazardous waste generated at the Facility.

At the time of the March 20 – 24, 2023 Inspection, MAX failed to meet the following conditions of the temporary accumulation exemption:

1. MAX stored F039 hazardous waste for greater than 90 days without an approved time limit extension from PADEP. Inspectors observed a leaking vacuum box in the container storage area No. 2 labeled and dated with a tag that read “F039 12-9-22,” indicating that the hazardous waste had been stored at the Facility for greater than 90 days. Pursuant to 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(b), “[a] generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 C.F.R. parts 264 and 265 and the permit requirements of 40 C.F.R. part 270 unless he has been granted an extension to the 90-day period.”
2. MAX failed to keep containers of hazardous waste closed, except when adding or removing material as provided in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. §§ 262.34(a)(1) and 265.173(a). During the Inspection, Inspectors observed five open drums of hazardous waste in the hazardous waste containment building. MAX was not adding to or removing waste from the containers at such time. In addition, Inspectors observed three roll-off containers that were not completely covered with tarps and with straps that were not completely fastened. MAX was not adding to or removing waste from the containers at such time.

**Allegation 2: (A) Failure to meet the Treatment Standards for the Land Disposal Restrictions (“LDR”) for Hazardous Waste and (B) Failure to meet Universal Treatment Standards (“UTS”) for Hazardous Waste.**

Part II - General Facility Conditions of the RCRA Subtitle C Permit states: “The Permittee shall comply with standards under 40 C.F.R. Part 268 (incorporated by reference at 25 Pa. Code Chapter 268a, except where stated at 25 Pa. Code § 268a.1) applicable to hazardous waste storage and treatment facilities.”

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<sup>1</sup> As part of the June 29, 2009 authorization, EPA approved Pennsylvania’s incorporation by reference of the federal regulations which were in effect as of October 12, 2005, including, among other things, incorporation of 40 C.F.R. § 262.34. (Accumulation Time, which lists the requirements for the generator permit exemption). As a result, 40 C.F.R. § 262.34 (2005) is the currently federally enforceable version of that RCRA regulation in Pennsylvania. On November 28, 2016, EPA re-codified the generator permit exemption, effective on May 30, 2017. The federal requirements previously found in 40 C.F.R. § 262.34 are now re-codified at 40 C.F.R. §§ 262.15 – 262.17.



25 Pa. Code Chapter 268a, which incorporates by reference 40 C.F.R. Part 268, prescribes treatment standard requirements for certain hazardous waste before such hazardous waste may be land disposed in a RCRA Subtitle D waste landfill.

During the Inspection, Inspectors collected and analyzed five grab samples (S01-S05) from a mixture of four treated waste batches that were disposed in MAX's residual waste landfill No. 6. Samples S01-S05 all exceeded the LDR treatment standards for cadmium and lead. Samples S01-S05 also exceeded the universal treatment standard (UTS) for thallium. In addition, Inspectors collected and analyzed five grab samples (S06-S10) of a treated waste batch in roll-off containers that MAX had approved for disposal in landfill No. 6. Samples S06-S10 all exceeded the LDR treatment standards for cadmium and lead.

**Allegation 3. Failure to Maintain the Containment Building Standard Requirements Set Forth in the RCRA Subtitle C Permit**

***A. Failure to Maintain and Repair Containment Building as a Closed Unit***

Part IV.C.7. of the RCRA Subtitle C Permit states that "The Permittee shall construct, operate, and maintain the containment building in a manner which prevents surface water percolation and precipitation entry into stored hazardous waste, as specified in Attachment 6." In addition, Part IV.C.10. of the RCRA Subtitle C Permit states that "the containment building walls (interior and exterior) that serve as structural support walls shall be sufficiently reinforced to prevent failure."

During the Inspection, Inspectors observed significant damage and deterioration to the exterior walls surrounding the door frames to bays 1 and 2, where hazardous waste with waste codes D004-D008, D010, D011, K061, and K062 are stored, such that large holes were present in the walls or the walls were missing (southern wall of bay 1). In addition, bay 4 is not equipped with a wall or door along its eastern side and is not fully enclosed.

***B. Failure to Maintain Hazardous Waste Containment Building to Prevent the Entry of Precipitation Into the Building Onto Hazardous Waste***

Part IV.C.2. of the RCRA Subtitle C Permit states that "The Permittee shall construct and maintain the containment building with structures that provide protection from precipitation." In addition, Part IV.C.4. of the RCRA Subtitle C Permit states that "The Permittee shall operate and maintain a surface water run-off and run-on control system, as specified in Attachment 6." Moreover, Part IV.C.7. of the RCRA Subtitle C Permit states that "The Permittee shall construct, operate, and maintain the containment building in a manner which prevents surface water percolation and precipitation entry into stored hazardous waste, as specified in Attachment 6."

During the Inspection, Inspectors observed precipitation enter the containment building through the roof of bay 4 and contact bulk, non-containerized, hazardous waste. In addition, the Inspectors

observed liquid that appeared to be stormwater on the ground inside of bay 3 near several chemical containers.

***C. Failure to Inspect and Maintain Leachate Collection System for Containment Building***

***D. Failure to Conduct Daily Inspections of the Containment Building.***

Part IV.C.8. of the RCRA Subtitle C Permit states, in pertinent part, that “The Permittee shall construct, operate, and maintain a leachate collection and removal system according to the plans and specifications in Attachment 6 of the RCRA Subtitle C Permit.”

Part IV.H. of the RCRA Subtitle C Permit states:

1. The Permittee shall inspect the containment building daily when waste is being stored or treated and weekly when the building is not in use to detect...leachate collection/detection systems and liner condition. The Permittee shall also conduct annual structural inspections of the secondary containment system and containment building base.
2. The Permittee shall record the amount of liquids removed from the leachate detection zone at least weekly....
3. If there is liquid detected in the leachate detection zone...the Permittee shall follow the action and notification requirements of 40 C.F.R. § 264.1101(c)(3).

MAX does not appear to be maintaining, or conducting required inspections of, the leak detection system of its hazardous waste containment building, and MAX is not performing annual structural inspections of the secondary containment building system and containment building base as required by the RCRA Subtitle C Permit. During the Inspection, Inspectors observed the leachate leak detection tube at the northeast corner of the containment building was not accessible for monitoring because it was covered by backfill, and, as a result, MAX had been unable to monitor the leachate collection and removal system for leaks per the method required in the RCRA Subtitle C Permit. In addition, MAX’s facility inspection records indicate that MAX does not conduct daily inspections of its hazardous waste containment building when waste is stored in the building, as required by the RCRA Subtitle C Permit. MAX personnel only conduct inspections of the containment building during weekdays and no inspections appear to be conducted during weekends. Additionally, MAX was unable to provide documentation during the Inspection to demonstrate that annual structural inspections of the secondary containment system and the containment building base are conducted.

**Allegation 4: Failure to Keep Containers of Hazardous Waste Closed Except When Adding or Removing Hazardous Waste From Such Containers**

Part V.F. of the RCRA Subtitle C Permit states that the Permittee shall manage containers as required by Pa. Code Chapter 264a, which incorporates by reference 40 C.F.R. § 264.173.

40 C.F.R. § 264.173(a) states that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

During the Inspection, Inspectors observed five open drums of hazardous waste in the hazardous waste containment building. MAX was not adding to or removing waste from the containers at such time. In addition, Inspectors observed three roll-off containers that were not completely covered with tarps and with straps that were not completely fastened.

**Allegation 5. Failure to Maintain a Containment System that is Designed and Operated in Accordance with the RCRA Subtitle C Permit**

Part V.G. of the RCRA Subtitle C Permit states that the Permittee shall manage Areas 1-5 in accordance with 25 Pa. Code 264a, which incorporates by reference 40 C.F.R. § 264.175.

40 C.F.R. § 264.175(b)(2) provides, in pertinent part, that a containment system must be designed and operated as follows: The base must be sloped, or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids.

MAX's container storage Area No. 2 is constructed with a concrete surface and concrete curbing; the concrete surface is designed to be sloped and curbed to drain to a sump. The current condition of the containment pad is no longer operating to meet the intent for spills and accumulated precipitation to drain properly. During the Inspection, Inspectors observed that the concrete secondary containment pad for container storage Area No. 2 had settled, causing liquid to accumulate in the southeast corner of the pad and not to drain towards the sump in the center of the secondary containment pad.

**Allegation 6. Failure to Follow the Designated Procedures for Sampling at the Facility According to the Waste Analysis and Classification Plan (WACP)**

Part II of the RCRA Subtitle C Permit states, in pertinent part, that the Permittee shall follow the procedures in the attached Waste Analysis Plan, Attachment 1 to the Permit.

The Waste Analysis Plan, Attachment 1 to the Permit, states in pertinent part, that:

- 5.3 Waste Shipment Samples

The following sampling strategies are employed to ensure that representative samples are collected for waste acceptance evaluations.

- 5.3.1 Bulk Solid Waste Shipments

Dry materials and materials with large or uneven particle sizes are sampled using a shovel or scoop. Since these devices only allow sampling near the surface of the waste,

multiple samples are collected and composited in a clean plastic container from different depths when a shovel or scoop is used.

In order to ensure the representative nature of the samples collected from bulk solid waste shipments, multiple points within the shipping container are sampled. A minimum of three sampling locations evenly distributed along the length of the container are sampled and composited.

- 5.4 Waste Treatment Units

All waste treatment conducted at the facility is performed in tanks or mechanical processing units. The following procedures ensure that representative samples are obtained from the tanks or treatment units for post-treatment testing.

- 5.4.2 Solid Processing Tanks and Mechanical Processing Units

Samples from the tank or mechanical units used for waste processing in solid form are obtained by collecting samples from a minimum of four locations spaced evenly along the length of the tank or storage container. An excavator bucket may be used to collect the sample from a tank while the storage container can typically be accessed with a scoop or shovel. An aliquot is removed from each excavator bucket or storage container using a scoop and composited into a sample container. The composite sample is thoroughly mixed and delivered to the laboratory for characterization.

During the Inspection, MAX representatives did not follow the designated procedures for sample collection as required in the WACP of its RCRA Subtitle C Permit. For example, Inspectors observed MAX representatives collect grab samples instead of required composite samples for hazardous waste acceptance screening and for hazardous waste post-treatment verification testing. Inspectors also observed these samples were not taken with the required sampling tools as specified in the WACP. In addition, MAX's WACP requires that representative samples of incoming bulk wastes must be collected from a minimum of three locations evenly distributed along the container and composited. During the Inspection, Inspectors observed MAX representatives only collect a single grab sample from one location in a solid waste stabilization and solidification (SWSS) pit for both incoming wastes and treated wastes, which does not meet the WACP requirements for representative sampling.

**Allegation 7. Failure to Maintain and Operate a Facility to Minimize the Possibility of a Release of Hazardous Waste.**

Part II.A. of the Permit states that the "Permittee shall maintain and operate the facility to minimize the possibility of a fire, explosion, or release of hazardous waste or hazardous waste constituents to air, soil, surface water, or groundwater which could threaten human health or the environment."

Part III.O. of the RCRA Subtitle C Permit states that the “Permittee shall minimize or eliminate the tracking of waste within or outside the site and the immediate waste unloading/loading areas.”

During the Inspection, Inspectors observed hazardous waste mixing with rainwater and leaving the containment building at the Facility and hazardous waste materials spilled on the ground outside the SWSS pits. The Inspectors also observed vehicles that came in contact with waste in the containment and processing (“CAP”) building track that waste across the area between the CAP building and the SWSS pits.

### **Opportunity to Confer**

Information currently available to EPA indicates that the Permittee is in noncompliance with the CWA and RCRA due to noncompliance with the aforementioned permits and regulations. The EPA is considering the appropriate enforcement response to the above-described alleged violations. The EPA is offering the Permittee an opportunity to meet and/or confer with the Agency, to demonstrate, through the submission of additional information, that the Permittee was in compliance with the Permits and regulations at the time of the Inspection. This meeting is referred to by the EPA as an Opportunity to Confer Meeting.

To schedule an Opportunity to Confer Meeting with the EPA please contact my staff **within twenty-one (21) calendar days** of receipt of this letter. You may contact Edward Simas, Enforcement Officer, and Allison Gieda, Environmental Engineer, or have your attorney contact Louis Ramalho, Senior Assistant Regional Counsel, using the contact information provided below.

Please note that to the extent there is ongoing noncompliance with any permit, regulatory, or statutory requirement, such noncompliance should be corrected immediately. The EPA specifically reserves the right to use any and all enforcement tools at its disposal to address violations at the Yukon and Bulger Facilities regardless of any future discussions in response to this letter.

Please direct your written response, all questions, and communications concerning the CWA NPDES portion of this letter to:

Edward Simas  
Enforcement Officer  
U.S. Environmental Protection Agency, Region 3  
Tel: (215) 814-2120  
[simas.edward@epa.gov](mailto:simas.edward@epa.gov)

and

Allison Gieda  
Environmental Engineer  
U.S. Environmental Protection Agency, Region 3  
Tel: (304) 234-0232

[gieda.allison@epa.gov](mailto:gieda.allison@epa.gov)

Please direct your written response, all questions, and communications concerning the RCRA Subtitle C and D portion of this letter to:

Andrew Van Woert  
Enforcement Officer  
U.S. Environmental Protection Agency, Region 3  
Tel: (215) 814-2175  
[vanwoert.andrew@epa.gov](mailto:vanwoert.andrew@epa.gov)

and

Rebecca Serfass  
Enforcement Officer  
U.S. Environmental Protection Agency, Region 3  
Tel: (215) 814-2047  
[serfass.rebecca@epa.gov](mailto:serfass.rebecca@epa.gov)

With a copy of all correspondence to:

Louis Ramalho  
Sr. Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 3  
Tel: (215) 814-2681  
[ramalho.louis@epa.gov](mailto:ramalho.louis@epa.gov)

Any submission of information or documentation to the EPA relating to this matter must include the following certification signed by you or your legal counsel:

*I certify under penalty of law that I have personally examined and am familiar with the information submitted in this response to the Notice of Potential Violations and Opportunity to Confer and that, based on my inquiry of those individuals immediately responsible for obtaining or compiling the information, I believe that the submitted information is true, accurate, and complete. I recognize that there are significant penalties for submitting false and/or misleading information, including the possibility of fine and/or imprisonment.*

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The Permittee is entitled to assert a claim of business confidentiality (CBI claim) covering part or all of any submitted information in the manner described in 40 C.F.R. § 2.203(b). Information subject to a CBI claim will be made available to the public only in accordance with 40 C.F.R. Part 2, Subpart B. If no business confidentiality claim accompanies the information when it is received by the EPA, it may be made available to the public without further notice to you.

The EPA has not determined whether MAX constitutes a “small business” under the Small Business Regulatory Enforcement and Fairness Act (“SBREFA”). The Small Business Resources Information Sheet provides information on (1) contacting the SBREFA Ombudsman to comment on Federal enforcement and compliance activities and (2) compliance assistance. Any decision to participate in such program or to seek compliance assistance does not relieve MAX of its obligation to respond in a timely manner to an EPA information request or other enforcement action and does not create any new rights or defenses under law.

Please note that this letter is not subject to review by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520.

Lastly, please note that in determining any appropriate penalty amount, the EPA also may consider a violator’s voluntary performance of a Supplemental Environmental Project (SEP). A SEP is a project that is not otherwise legally required of, or planned by, a violator, which is designed to either (1) reduce the likelihood that similar violations will occur in the future, (2) reduce adverse public health and/or environmental impacts to which the violations contributed, or (3) reduce the overall risk to public health and/or the environment potentially affected by the violations. For your information, here are links to the [EPA SEP website](#) and to the [EPA’s 2015 SEP Policy](#). If you are interested in proposing or discussing performance of a SEP as part of the settlement of this matter, please review the SEP Policy prior to our meeting. The EPA would welcome the discussion of any proposals or questions you may have about potential SEPs.

We look forward to your response.

Sincerely,

Karen Melvin  
Director  
Enforcement and Compliance Assurance Division

cc: Louis F. Ramalho, Esq. (EPA) (via email: [Ramalho.Louis@epa.gov](mailto:Ramalho.Louis@epa.gov))  
Edward Simas (EPA) (via email: [Simas.Edward@epa.gov](mailto:Simas.Edward@epa.gov))  
Allison Gieda (EPA) (via email: [Gieda.Allison@epa.gov](mailto:Gieda.Allison@epa.gov))  
Andrew Van Woert (EPA) (via email: [VanWoert.Andrew@epa.gov](mailto:VanWoert.Andrew@epa.gov))  
Rebecca Serfass (EPA) (via email: [Serfass.Rebecca@epa.gov](mailto:Serfass.Rebecca@epa.gov))  
Melissa Gross (PADEP) (via email: [melgross@pa.gov](mailto:melgross@pa.gov))

**Enclosure**