

LATHROP & GAGE_{LLP}

DAVID A. SHORR
DIRECT LINE: 573.761.5005
EMAIL: DSHORR@LATHROPGAGE.COM
WWW.LATHROPGAGE.COM

314 E. HIGH STREET
JEFFERSON CITY, MISSOURI 65101
PHONE: 573.893.4336
FAX: 573.893.5398

January 23, 2014

**VIA HAND DELIVERY TO
LEWIS & CLARK BUILDING**

Marty Miller
Deputy General Counsel
Missouri Department of Natural Resources
PO Box 176
Jefferson City, MO 65102-0176



Re: TNT General Contracting, Inc. – Missouri Department of Natural Resources

Dear Marty:

Enclosed please find the Abatement Order on Consent executed by my clients, TNT General Contracting, Inc. and the Gary and Carol Trump Trust. Also enclosed is a letter consistent with paragraph 64.

The remaining secondary zinc materials were removed from the site by Bob Webb last week meeting the requirements of paragraphs 59 and 66.

In order to bring this matter to conclusion, please cause the Abatement Order on Consent to be signed by Leanne Tippet Mosby and return a fully-executed copy to me.

Consistent with our conversations with Ms. Belinda Holmes of USEPA, I would request you expedite that signature so we can dismiss all matters regarding USEPA's positions.

Please call me if there are any concerns.

Very truly yours,

LATHROP & GAGE_{LLP}

By:


David A. Shorr

DAS/jf
Enclosure
cc w/enclosure: Belinda Holmes

CALIFORNIA COLORADO ILLINOIS KANSAS MASSACHUSETTS MISSOURI NEW YORK

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI**

IN THE MATTER OF:

TNT General Contracting, Inc.;
Gary and Carol Trump Trust (U/T/A);
TNT Trukn Inc.; and
EnviroMx Inc.

SERVE:

Mr. Thad Trump
TNT General Contracting, Inc.
RR 3 Box 78C
Kahoka, MO 63445

and

Mr. Gary Trump
TNT General Contracting, Inc.
RR 3 Box 78C
Kahoka, MO 63445

No. 2014-WPCB-1254

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The Missouri Department of Natural Resources (Department) hereby issues this Abatement Order on Consent Number 2014-WPCB-1254 (AOC), with the consent of TNT General Contracting, Inc.; the Gary and Carol Trump Trust (U/T/A); TNT Trukn Inc.; and EnviroMx Inc. (collectively referred to as TNT), as a formal administrative action by the State of Missouri because TNT has allegedly violated the Missouri Clean Water Law (MCWL), Chapter 644, RSMo, and the Missouri Hazardous Waste Management Law (MHWML), Sections 260.350-260.430, RSMo, and their implementing regulations, as described below. This AOC is issued under the authorities of Sections 644.056, 644.079, 260.410, 260.412, and 260.375, RSMo. Failure to comply with this AOC is, by itself, a violation of both the MCWL and MHWML. Litigation may occur without further notice if TNT fails to comply with any of the terms of this AOC.

II. FINDINGS OF FACT

1. TNT General Contracting, Inc.; TNT Trukn Inc.; and EnviroMx Inc. are Missouri corporations that conduct business one half mile east of the intersection of US-136 and Main Street in Kahoka, Clark County, Missouri. These corporations include a general trucking company, and also store and handle diatomaceous earth, lime, carbon, sugar, fertilizer, and manure at this location (the operation).
2. The operation is located on real property owned by the Gary and Carol Trump Trust (U/T/A), and consists of four (4) large metal buildings, an office, and a weigh scale.
3. As first published on July 24, 2002, federal regulations have excluded from the definition of solid waste certain hazardous secondary materials used to make zinc fertilizers, and certain zinc fertilizers made from hazardous wastes, provided that specific conditions are satisfied. *See* 40 CFR 261.4(a)(20)-(21). These federal regulations were incorporated by reference into state regulations administered by the Department pursuant to 10 CSR 25-4.261(1), filed March 31, 2006 and effective December 30, 2006. The Department intends to initiate a rulemaking to revise its regulations related to this exclusion.
4. Since before 2002, TNT has been engaged in receiving secondary materials at the operation with the intent of managing them for use in the production of zinc-based fertilizers. TNT states that it understood such material to be exempt from hazardous waste management requirements under 40 CFR 261.4(a)(20)-(21) and 10 CSR 25-4.261. TNT now intends to cease all such activities.
5. All stormwater from the operation is directed to a retention basin located on the northeast portion of the operation prior to discharging from a constructed conveyance structure, Outfall 001, to a tributary to Weaver Branch pursuant to the terms and conditions of Missouri State Operating Permit (MSOP) number MO-0136514. Flow from the basin is dependent upon precipitation, but the design flow is 0.35 million gallons per day. The legal description for the basin is Northeast ¼, Northwest ¼, Section 28, Township 65 North, Range 7 West, in Clark County.
6. The Department alleges that Weaver Branch and its tributaries are waters of the state as the term is defined in Section 644.016, RSMo.
7. Chemical oxygen demand, biochemical oxygen demand, zinc, hexavalent chromium, ammonia, temperature, and selenium are water contaminants as the term is defined in Section 644.016, RSMo.
8. On March 24, 2010, Department staff conducted a compliance inspection at the operation in response to an environmental concern reporting that the operation was improperly managing hazardous waste. During the inspection, Department staff observed the operation was improperly storing and managing zinc bearing secondary materials, which the Department alleges constituted hazardous wastes, as the

majority of such materials were stored in piles around the property or in supersacks and exposed to the elements. At the time of the inspection, Department staff learned that the operation was blending and mixing zinc-bearing materials originating from several out-of-state metal plating and galvanizing operations in connection with Webb Minerals, LLC and/or Bob Webb (collectively, Webb). Webb would then sell the zinc bearing material to commercial fertilizer manufacturers to be added as a zinc micronutrient in fertilizer product. As a result of the observations made by Department staff, the Department alleges that TNT and Webb were operating as a treatment and storage disposal facility and a large quantity generator of hazardous wastes, without properly following the zinc fertilizer exemption (*see* 40 CFR 261.4(a)(20)-(21) and 10 CSR 25-4.261(1)-(2)). During the inspection, Department staff observed a majority of the stormwater from the operation drained to a retention basin, which discharged at the southeast corner of the operation to a tributary to Weaver Branch without an operating permit. At the time of the inspection, the discharge from the retention basin into the tributary to Weaver Branch was black and odorous. Department staff also observed a white-colored discharge from the northwest side of the property entering a tributary to Weaver Branch.

9. On June 16, 2010, Department staff conducted a follow-up inspection at the operation and collected water samples for analyses from the receiving tributary where stormwater discharges from the northwest portion of the operation and below the discharge point for the retention basin. Water analyses documented exceedances of water quality standards (WQS) specific criteria for pH, ammonia, temperature, and hexavalent chromium, as indicated in the following table:

Table 1. Water analyses results for parameters that exceeded water quality standards (WQS) during the June 16, 2010, sampling event.

Location	Parameter	Sample	WQS
Northwest	pH	11.87	6.5 – 9.0
Northwest	Ammonia (mg/L)	11.6	1.3
Northwest	Temperature (C)	35.1	32.22
Basin	Temperature (C)	37.7	32.22
Basin	Hexavalent Chromium (µg/L)	45.6	15

10. On August 20, 2010, the Department issued Notice of Violation (NOV) number NER2010081609523552 to TNT for operating a water contaminant source without an MSOP, causing pollution to waters of the state, and discharging water contaminants into waters of the state which reduced the quality of such waters below the water quality standards established by the Missouri Clean Water Commission.
11. On August 20, 2010, the Department also issued NOV number NER2010081409503540 to TNT for failing to make a hazardous waste determination; operating as an unpermitted treatment, storage, and disposal facility (TSDF); failing to properly store hazardous waste; failing to have a training plan; and failing to have a contingency plan.

12. TNT is among the Respondents subject to the U.S. Environmental Protection Agency (EPA) Unilateral Administrative Order (Docket No. RCRA-07-2010-0034, CWA-07-2010-0155) dated September 2, 2010 (EPA's Order). Among other things, EPA's Order requires Respondents to inventory and make hazardous waste determinations with respect to all containers, drums, totes, supersacks, and piles at the site; submit an inventory and removal plan to EPA; conduct site characterization activities; and "cleanup the property and any contaminated surrounding areas as necessary." TNT has since completed many of the actions described by EPA's Order. With EPA's concurrence, and without affecting EPA's ability to separately pursue any claims against Webb, TNT and the Department intend to resolve the violations by TNT described in this AOC.
13. On September 14, 2010, the Department received an application from TNT for a stormwater discharge permit, and on May 20, 2011, the Department issued MSOP number MO-0136514 to the Gary and Carol Trump Trust for stormwater discharges at the operation. MSOP number MO-0136514 requires TNT to collect a sample of stormwater from Outfall 001 within the first sixty (60) minutes of a storm event of 0.1 inches or greater, that results in a discharge, for water analyses, and submit the results to the Department on quarterly Discharge Monitoring Reports. The permit establishes benchmark effluent limitations; if a sample exceeds a benchmark limitation, TNT is required to review the operation's stormwater pollution prevention plan (SWPPP) and associated best management practices (BMPs) to determine improvements and/or additional controls needed to reduce the pollutant in the operation's discharge.
14. On August 11, 2011, TNT collected a water sample from a groundwater monitoring well identified as GW-2 and located immediately down-gradient from the former zinc-bearing material-processing area at the operation. Water analyses indicated that the concentration of selenium was 0.121 mg/L, which exceeds the specific criterion for groundwater under state water quality standards. The water quality standard protective of groundwater supplies is 0.05 mg/L.
15. On April 23, 2013, Department staff conducted an abbreviated inspection at the site to document operational changes that have occurred at the site since 2010. Prior to the inspection, Department staff met with TNT representatives and were informed that TNT does not generate hazardous waste at the operation, no longer accepts zinc-bearing materials to generate fertilizer, and has not conducted any land application of process wastewater from the retention basin since 2010. TNT representatives reported that TNT mainly recycles corn sugar and corn stalk bales from processing plants to generate cattle feed for sale. Representatives further stated the discharge from the basin has exceeded a few permit benchmark limits since TNT obtained the operating permit; therefore, TNT installed an aerator in the retention basin in early 2012 to help increase dissolved oxygen and decrease biochemical oxygen demand and chemical oxygen demand. During the inspection, Department staff observed biodiesel drums stored in plastic totes under cover of one of the metal buildings. Staff also observed numerous cubic yard sacks of zinc bearing material under one of the metal buildings, two (2) dumpsters mostly covered with tarps in the center of the operation and four (4) tractor trailers all containing zinc bearing material. TNT

informed Department staff the dumpsters, tractor trailers, and cubic yard sacks consisting of approximately sixty (60) tons of zinc fertilizer ingredients and precursors contained the only zinc material remaining at the operation. TNT also informed Department staff this material is owned by, and shall be properly disposed of according to hazardous waste handling requirements, by Webb. Department staff asked to see the operation's staff training log required by Special Conditions 7(b)(7) of MSOP number MO-0136514, but it was not available. Department staff also documented that TNT failed to provide documentation of twice per month site inspections as required by Special Conditions 7(b)(9). At the time of the inspection, effluent was discharging from the basin through a layer of rocks around the outfall location, rather than through the constructed outfall pipe. The basin had some duckweed growth and a strong sulfur-like odor. The receiving tributary also had a strong musty, sulfur-like odor, and Department staff observed a light whitish-green precipitate settling on rocks along the tributary and on the bottom of the tributary up to at least 50 feet below the outfall. Department staff collected water samples from the receiving stream approximately 15 feet below the outfall, and documented exceedances of benchmark effluent limitations for dissolved oxygen, chemical oxygen demand, and dissolved hexavalent chromium, as indicated in the following table:

Table 2. Water analyses results for parameters that exceeded permitted benchmark effluent limitations during the April 23, 2013, sampling event.

Parameter	Tributary	Permit Limitation
Dissolved Oxygen (mg/L)	1.14	≥ 5
Chemical Oxygen Demand (mg/L)	136	90
Hexavalent Chromium (µg/L)	27.3	15

16. Quarterly DMRs submitted to the Department document the effluent discharged from TNT's retention basin exceeded the benchmark limitation for chemical oxygen demand during four (4) quarters, including 4th quarter of 2011, 2nd and 4th quarters of 2012, and 2nd quarter of 2013.
17. Quarterly DMRs submitted to the Department document the effluent discharged from TNT's retention basin exceeded the benchmark limitation for dissolved zinc during four (4) quarters, including 4th quarter of 2011, 2nd and 4th quarters of 2012, and 2nd quarter of 2013.
18. Quarterly DMRs submitted to the Department document the effluent discharged from TNT's retention basin was below the benchmark limitation for dissolved oxygen during two (2) quarters, including 4th quarter of 2011 and 2nd quarter of 2012.
19. To date, the Department has not received a DMR for 1st quarter of 2013 or a complete DMR for 2nd quarter of 2013. The DMR for 2nd quarter of 2013 is missing values for the following parameters: flow (for May and June 2013), conductivity, dissolved oxygen, total hardness, and temperature.

20. In April, June, September, and December of 2013, TNT entered into Tolling Agreements with the Department.
21. On July 11, 2013, the Department received a letter in response to the Department's April 23, 2013, site visit, from Ryan LaDieu, P.E. for True North Consultants, which stated that TNT installed an aerator in early 2012 to alleviate exceedances of benchmark limitations for chemical oxygen demand. The letter also stated that TNT has been performing monthly and annual inspections, but will begin performing twice-per-month inspections, and will provide required training and record said training in accordance with Special Condition 7(b)7 of MSOP number MO-0136514. Furthermore, the letter recommended further evaluation of stormwater and sediment in the retention basin to develop an action plan for compliance with MSOP number MO-0136514, which could include removal of water and sediment from the retention basin. The letter did not provide a specific plan for evaluating the stormwater or sediment, or provide dates for completing corrective actions and achieving compliance with MSOP number MO-0136514.
22. As a result of the above investigations, the Department incurred costs for staff time in the amount of \$39,455.63, between March of 2010 and April of 2013.
23. Section 644.096, RSMo allows the Department to recover actual damages, including all costs and expenses necessary to establish or collect any sums under Section 644.006 to 644.141, RSMo, and the costs and expenses of restoring any waters of the State to their condition as they existed before the violation, sustained by the State because of the violation.
24. Section 644.076.1, RSMo, makes it unlawful to cause or permit any discharge of water contaminants from any water contaminant or point source located in Missouri in violation of sections 644.006 to 644.141, or to violate any standard, rule or regulation promulgated by the Clean Water Commission. It also establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.
25. Section 260.425, RSMs, makes its unlawful for any person to cause or permit any acts or hazardous waste management practices which violate sections 260.350 to 260.430 or any standard, rule or regulation thereunder, and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day for each day, or part thereof, the violation occurred and continues to occur, or both.
26. This AOC is necessary to achieve compliance and/or to prevent or eliminate threats to human health or the environment.

III. CONCLUSIONS OF LAW

Violations of the MCWL and MHWML and their implementing regulations alleged herein and found to have occurred at the Operation are as follows:

27. On March 24 and June 16, 2010, operated, used, disturbed land, or maintained an existing stormwater point source – stormwater retention basin – which intermittently discharges to a tributary to Weaver Branch, waters of the state, without a MSOP, in violation of Sections 644.051.2, 644.076.1, RSMo, and 10 CSR 20-6.200(1)(A).
28. On March 24, 2010, June 16, 2010, August 11, 2011, and April 23, 2013, caused pollution of a tributary to Weaver Branch, waters of the state, or placed or caused or permitted to be placed a water contaminant in a location where it is reasonably certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.
29. On March 24, 2010, June 16, 2010, August 11, 2011, and April 23, 2013, discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission, in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031.
30. Failed to conduct twice per month site inspections and prepare brief written reports as required by Special Conditions 7(9) of MSOP number MO-0136514, in violation of Sections 644.051.1(3) and 644.076.1, RSMo.
31. Failed to provide proof of training as required by Special Conditions 7(7) of MSOP number MO-0136514, in violation of Sections 644.051.1(3) and 644.076.1, RSMo.
32. Failed to sample the next discharge after an exceedance of a benchmark or effluent limitation as required by Section C, Sampling Requirements, Benchmarks, and Reporting of Benchmark Exceedance, 4 of MSOP number MO-0136514, in violation of 644.076.1, RSMo.
33. Failed to review the operation's SWPPP and associated BMPs to determine whether any improvements and/or additional controls are necessary to reduce the pollutants in the operation's stormwater discharges and implement the necessary changes in order to achieve compliance with effluent benchmark limitations, as required by Section C, Sampling Requirements, Benchmarks, and Reporting of Benchmark Exceedances, 2 of MSOP number MO-0136514, in violation of Section 644.076.1, RSMo.
34. Failed to submit complete, accurate, and timely DMRs as required in part "A" of MSOP number MO-0136514, in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(A)1.
35. Failed to register as a hazardous waste generator, in violation of Section 260.380.1(1) RSMo and 10 CSR 25.5.262(2)(A).
36. Failed to determine if waste was hazardous waste by methods in 40 CFR 262.11, in violation of 10 CSR 25-5.262(1), incorporating 40 CFR 262.11.

37. Failed to use a licensed hazardous waste transporter, in violation of Section 260.380.1(5) of the RSMo.
38. Operated as an unpermitted TSDf, in violation of Section 260.390.1(1) RSMo;
39. Materials are accumulated speculatively, in violation of 10 CSR 25-4.261 incorporating 40 CFR 261.1(c)(8).
40. Facility failed to demonstrate legitimate recycling, in violation of 10 CSR 25-4.261 incorporating 40 CFR 261.2(f).
41. Failed to store hazardous waste in containers that are in good condition, in violation of 10 CSR 25-5.262(1) incorporating 40 CFR 262.34(a)(1) referencing 40 CFR 265.171.
42. Failed to keep containers closed in storage, in violation of 10 CFR 25-5.262(1) incorporating 40 CFR 262.34(a)(1) referencing 40 CFR 62.173(a).
43. Failed to mark "Hazardous Waste" on hazardous waste containers, in violation of 10 CSR 25-5.262(1) incorporating 40 CFR 262.34(a)(3).
44. Failed to package, label, and mark containers per Department of Transportation (DOT) requirements during the entire on-site storage period, in violation of 10 CSR 25-5.262(2)(C)1.
45. Failed to mark the date of accumulation on containers, in violation of 10 CSR 25-5.262(1) incorporating 40 CFR 262.34(a)(2).
46. Failed to conduct regular inspections of facility, in violation of 10 CSR 25-5.262(2)(C)2.C(I) and (II) referencing 40 CFR 265.174.
47. Failed to conduct daily inspections of areas subject to spills, i.e., waste handling areas, in violation of 10 CSR 25-5.262(2)(C)2.C(II).
48. Failed to provide adequate aisle space, in violation of 10 CSR 25-5.262(1) incorporating 40 CFR 262.34(d)(4) referencing 40 CFR 265.35.
49. Failed to take precautions to prevent accidental ignition or reaction of ignitable or reactive wastes, including confining smoking and open flame to specially designated locations and conspicuously placing "No Smoking" signs by ignitable or reactive wastes, in violation of 10 CSR 25-5.262(2)(C)2.F(II).
50. Failed to operate and maintained facility so as to minimize the possibility of an emergency, in violation of 10 CSR 25-5.262(1) incorporating 40 CFR 262.34(a)(4) referencing 40 CFR 265.31.

51. Failed to maintain contingency plan on-site, in violation of 10 CSR 25-5.262(1) incorporating 40 CFR 262.34(a)(4) referencing 40 CFR 265.53(a).
52. Failed to train personnel to respond to emergencies, including the use of alarm systems, emergency equipment and contingency plan, in violation of 10 CSR 25-5.262(1) incorporating 40 CFR 262.34(a)(4) referencing 40 CFR 65.16(a)(3).
53. Speculatively accumulated hazardous secondary materials allegedly used to make zinc fertilizer, in violation of 10 CSR 25-4.261(1) & (2) incorporating 40 CFR 261.4(a)(20)(i).
54. Failed to submit a one-time notice to the Regional Administrator including a description of material and intended beginning date, in violation of 10 CSR 25-4.261(1) & (2) incorporating 40 CFR 261.4(a)(20)(ii)(A).
55. Failed to store material in tanks, containers or buildings that are maintained to prevent releases to the environment, in violation of 10 CSR 25-4.261(1) & (2) incorporating 40 CFR 261.4(a)(20)(ii)(B).

IV. AGREEMENT

56. Resolution of Claims. The Department and TNT desire to amicably resolve all claims that may be brought against TNT for violations alleged above in Section III, Conclusions of Law, without TNT admitting to the validity or accuracy of such claims. Specifically, TNT does not admit it handled hazardous waste, denies it was a large quantity generator of hazardous waste, and denies it has ever operated as a treatment, storage, or disposal facility for hazardous waste.
57. Binding Effect. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not affect the responsibilities of TNT under this AOC.
58. Penalties. TNT, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay a penalty in the amount of \$250,000.00, of which \$100,000 shall be suspended as described below. The upfront penalty in the amount of \$150,000 shall be submitted in the form of two (2) checks made payable to "*Clark County Treasurer, as custodian of the Clark County School Fund.*" The first check in the amount of \$75,000 is due and payable upon execution of this AOC by TNT. The second check in the amount of \$75,000 is due and payable by July 14, 2014. The checks and signed copy of the AOC shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

59. Suspended Penalty. The \$100,000 suspended penalty described in the preceding paragraph shall be suspended in accordance with the following and subject to approved extensions under paragraph 70:
- a. \$20,000 of such penalty shall remain suspended so long as TNT submits to the Department, by **January 31, 2014**, all permit application forms and other information that may be necessary in order to implement TNT's Compliance Plan for Stormwater/Basin as described below.
 - b. \$20,000 of such penalty shall remain suspended so long as TNT successfully dewater and removes sludge from the stormwater basin in accordance with a Department-approved plan no later than **June 1, 2014**.
 - c. \$20,000 of such penalty shall remain suspended so long as all zinc-bearing materials at the operation have been removed, by either Webb or TNT, in accordance with an EPA-approved removal and disposal plan, no later than **September 1, 2014**.
 - d. \$20,000 of such penalty shall remain suspended so long as TNT submits its Groundwater and Soil Analysis Report as described below no later than **July 1, 2014**.
 - e. \$20,000 of such penalty shall remain suspended so long as TNT does not otherwise violate the terms listed in Section IV ("Agreement") of this AOC for a period of three years from the execution of this AOC.

In the event that any of the suspended penalty amounts described in this paragraph ever become due, the Department may send a written demand for the suspended penalty to TNT. TNT shall have thirty (30) days from receipt of the written demand to either contest the demand in writing, or submit the suspended penalty in the manner described above. If TNT contests such demand, any written response from the Department regarding the amount due shall be binding on TNT, unless TNT successfully appeals or seeks judicial review of such response.

60. Department Costs Prior to May 2013. TNT agrees to pay the State's investigative costs in the amount of \$39,455.63. Such payment shall be in the form of two separate checks made payable to the "*State of Missouri*" in the amounts of (1) \$12,462.44 and (2) \$26,993.19. Such payments are due and payable upon execution of this AOC by TNT, and shall be delivered to the address provided above.
61. Department Costs After May 2013. During the term of this AOC, the Department will incur additional costs of monitoring TNT's compliance with the terms of this AOC. The Department may submit detailed invoices to TNT for the Department's direct and indirect costs and expenses associated with monitoring and oversight of the terms of this AOC. Within thirty (30) days after receipt of such invoice, TNT

shall make full payment of the Department's reasonable oversight costs and expenses as described in the invoice, or may contest the amount and explain its reasons for doing so in writing. If TNT contests such amount, any written response from the Department regarding the amount due shall be binding on TNT, unless TNT successfully appeals or seeks judicial review of such response. The Department's reasonable oversight costs shall be limited to inspection, sampling, document review, and observation related to compliance with this AOC.

62. Department Costs Related to Stream Assessment and/or Restoration. During the term of this AOC, the Department will incur additional costs of assessing the condition of Weaver Branch and its tributary in the vicinity of and downstream from the operation, and the parties agree that additional sampling data is required regarding potential damage to the creek bed from the operation. The parties further recognize that either the Department or TNT may incur costs associated with sediment removal or other restoration of such streams. TNT agrees to pay for reasonable costs related to such activities incurred by the Department within two (2) years after execution of this AOC, up to a maximum amount of \$150,000. Within thirty (30) days after receipt of an invoice from the Department, TNT shall make full payment, or may contest the amount and explain its reasons for doing so in writing. If TNT contests such amount, any written response from the Department regarding the amount due shall be binding on TNT, unless TNT successfully appeals or seeks judicial review of such response.
63. No Further Processing of Zinc-Bearing Materials. TNT shall not receive, handle, store, process, blend, mix, or produce any zinc-bearing secondary materials (whether or not considered solid or hazardous waste) that could be used to make zinc fertilizers, or any zinc fertilizers made from such materials, at the operation or any other location.
64. Letter of Support for Rule Change. Within five (5) business days after executing this AOC, TNT shall finalize and submit to the Hazardous Waste Management Commission, a letter expressing support for a state rulemaking that would remove from the Code of State regulations the federal exclusion codified at 40 CFR 261.4(a)(20)-(21).
65. Compliance with Specific Permit Terms. Beginning immediately and continuing until MSOP number MO-0136514 is terminated by the Department, TNT agrees to comply with all conditions and requirements of MSOP number MO-0136514, including, but not limited to, the following: (i) **collecting stormwater samples required by the permit at Outfall 001 immediately below the basin's conveyance structure;** (ii) sampling the next discharge after an exceedance of an effluent benchmark limitation as required by Section C, Paragraph 4; (iii) conducting twice per month site inspections and prepare a brief written report as required by Section D, Paragraph 7(b)(9); and (iv) providing training, and maintaining proof of said training, to all personnel involved in material handling

and storage and housekeeping of maintenance areas as required by Section D, Paragraph 7(b)(7).

66. Removal of Zinc-Bearing Material. Until all zinc-bearing materials at the operation have received a hazardous waste determination and have been removed according to an EPA-approved removal and disposal plan, TNT agrees to properly maintain and store all zinc-bearing materials so as to prevent exposure of the materials to stormwater or a discharge from the storage containers. TNT agrees to store such materials in containers made of or lined with other materials which will not react with, and are otherwise compatible with, the stored zinc-bearing materials, so that the ability of the container to contain the materials is not impaired. If Webb has not removed such materials from the site by **May 1, 2014**, then TNT shall remove such materials from the operation according to an EPA-approved removal and disposal plan no later than **September 1, 2014**, subject to paragraph 70.
67. Ceasing Further Stormwater Discharges. By no later than **January 31, 2014**, subject to paragraph 70, and continuing until both (1) TNT completes all corrective actions required by paragraph 68 of this AOC, and (2) stormwater discharges from the operation comply with the permitted effluent benchmark limitations contained in MSOP number MO-0136514, TNT shall manage stormwater so as to prevent any further discharges from the stormwater retention basin. On January 31, 2014, TNT shall notify the Department of any actions taken to prevent further discharges, and whether it believes those actions have been and will continue to be successful in preventing further discharges from the basin. If TNT removes water from the basin in an effort to cease further discharges, TNT shall conduct laboratory analyses and make a hazardous waste determination to determine proper storage, transportation, and disposal of the water. If further discharge from the basin occurs, the Department may pursue any available remedies, including stipulated penalties as described below.
68. Long-Term Compliance Plan for Stormwater/Basin. TNT submitted to the Department for review and approval a Compliance Plan for TNT's stormwater basin, which was revised on or about December 17, 2013, in response to the Department's comments and the December 9, 2013 meeting of the parties, and which was prepared by a professional engineer licensed to practice in the State of Missouri. The Compliance Plan evaluates stormwater management practices at the operation and provides recommendations for the operation to comply with the conditions and requirements of MSOP number MO-0136514, including all effluent benchmark limitations. TNT shall immediately begin to implement this Compliance Plan, subject to the terms of the Department's approval letter dated January 2, 2014, which shall be enforceable under this AOC. The parties further agree that:
 - 1) By **June 1, 2014**, subject to paragraph 70, TNT shall implement the Department-approved Compliance Plan, achieve compliance with effluent benchmark limitations contained in MSOP number MO-0136514, and submit

a report to the Department documenting the corrective actions have been completed as approved by the Department.

- 2) On the first of every month, beginning **February 1, 2014**, TNT shall provide a written report to the Department regarding the status of its efforts to implement its Compliance Plan. TNT's report for June of 2014 shall indicate whether TNT believes the water in the basin would comply with the effluent benchmark limitations contained in MSOP number MO-0136514, if discharges were allowed to resume. If TNT believes the water would not meet such limitations, then TNT's report shall propose to the Department additional corrective actions. If the Department approves such further actions, then TNT shall implement them pursuant to this AOC. If the Department does not approve TNT's proposal, then the Department may pursue any other remedies allowed by law.

69. Addressing Groundwater Contamination. TNT has submitted to the Department for review and approval a Groundwater and Soil Analysis Plan (Groundwater Plan) dated November 27, 2013 to assess groundwater quality utilizing the existing GW-2 groundwater monitoring well and two (2) additional wells on site placed to capture high business traffic areas representing the greatest potential for contamination from the site's operations. TNT shall immediately begin to implement the Groundwater Plan, subject to the terms of the Department's approval letter dated January 2, 2014, which shall be enforceable under this AOC. TNT shall submit its Groundwater and Soil Analysis Report (Groundwater Report), by **July 1, 2014**, subject to paragraph 70 and such report shall either propose plans for mitigating groundwater contamination, or provide adequate justification for ruling out TNT's operation as the source of contaminants (i.e., selenium) in groundwater that exceed applicable water quality standards provided in 10 CSR 20-7.031. The parties further agree that:

- 1) If TNT establishes, based on the sampling and analysis conducted under the Groundwater Plan, that TNT's operation is not the source causing levels of selenium contamination in groundwater to exceed applicable Missouri water quality standards provided in 10 CSR 20-7.031, then the Department shall confirm in writing that no further corrective action to address such contamination is required. If TNT cannot make this demonstration, then TNT may meet and confer with the Department regarding next steps, and TNT shall, within sixty (60) days of the Department's request, submit to the Department for review and approval a Corrective Action Plan to address exceedances of Missouri water quality standards provided in 10 CSR 20-7.031. The Corrective Action Plan shall include an implementation schedule for mitigating the groundwater contamination and ensuring any remaining levels of contaminants in the local groundwater meet Missouri water quality standards provided in 10 CSR 20-7.031.
- 2) The Department may approve, disapprove, or comment on the Corrective Action Plan, or in its sole discretion may bring a separate action for corrective action based on groundwater contamination. If the Department comments on

the Corrective Action Plan, TNT shall respond to and adequately address all of the Department's comments within fifteen (15) days of receiving the Department's comments.

- 3) If the Department approves the Corrective Action Plan, TNT shall implement the approved Corrective Action Plan according to the schedule provided therein. Within thirty (30) days after implementation of the Corrective Action Plan, TNT shall submit to the Department a Corrective Action Report that assesses the effectiveness of the corrective actions taken, and evaluates and proposes any further actions that may be necessary. The Department shall either confirm that no further corrective action to address such contamination is required, provide comments on such report, or approve any proposed further actions. Within fifteen (15) days after receipt of any Department comments, TNT shall respond to and adequately address all of the Department's comments.
- 4) If a Corrective Action Plan is not approved, or TNT otherwise fails to implement appropriate corrective actions, the Department reserves the right to bring a separate action for corrective action based on groundwater contamination.

70. Requests for Additional Time. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, TNT shall notify the Department by telephone or electronic mail i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five (5) days of notifying the Department, TNT shall submit to the Department for review and approval a written request containing the same basic provisions of i, ii, and iii listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of TNT's right to request an extension and may be grounds for the Department to deny TNT an extension.

71. Stipulated Penalties. The stipulated penalties provided for in this AOC shall be in addition to any other rights, remedies, or sanctions available to the Department for TNT's violation of this AOC or other applicable law or permits. If the Department pursues any additional statutory penalties in response to a future violation of this AOC, then TNT shall be allowed a credit, for any stipulated penalties paid, against any such statutory penalties.

- 1) Should TNT fail to cease further discharges from the stormwater retention basin as described above, TNT shall be subject to stipulated penalties in the amount of \$1,000 per day for each day that water discharges from the basin.
- 2) Should TNT fail to meet other terms of Section IV (Agreement) of this AOC, TNT shall be subject to stipulated penalties for each discrete violation of this AOC in the following amounts:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
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1 to 30 days	\$250.00 per violation per day
31 to 90 days	\$500.00 per violation per day
91 days and above	\$1,000.00 per violation per day

- 3) Stipulated penalties will be paid in the form of a certified or cashiers check made payable to “*Clark County Treasurer, as custodian of the Clark County School Fund.*” Any such stipulated penalty shall be paid within ten (10) days of demand by the Department and shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

72. Reservations. Compliance with this AOC resolves only the specific violations described herein, and this AOC shall not be construed as a waiver or modification or any other legal requirements. This AOC shall not relieve TNT of liability, or preclude the Department from taking enforcement action, for any future violations of this AOC or any permit, statute, regulation, or other source of law. Nothing in this AOC shall be construed to affect, limit, or preclude any claims that could be made, or have been made, against Webb by the EPA, TNT, or the Department. This AOC shall not be construed as satisfying any claim for natural resource damages, which the parties acknowledge may be fully or partially be satisfied by the efforts described above related to stream assessment and restoration, and/or addressing groundwater contamination. The parties further agree that the period commencing on March 22, 2010, and ending once this AOC has been terminated, shall toll, and shall not be included in computing the running of, any statute of limitations potentially applicable to any such claim by the Department for natural resource damages, and that any defenses of laches, estoppel, or waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include such time period.
73. Exclusivity. The terms stated herein constitute the entire and exclusive agreement of the parties with respect to the above-mentioned violations. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.
74. Effect of Signature. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.
75. Resolution of Claims. Upon full payment of the above-mentioned amounts and full compliance with all provisions of this AOC, the Department agrees to refrain from initiating or asserting against TNT any claims arising out of the violations of the MCWL, Chapter 644, RSMo, or MHWMP, Chapter 260, RSMo, listed in Notice of Violation numbers NER2010081609523552 and NER2010081409503540.

76. Effective Date. The effective date of the AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of this AOC to TNT for its records.

77. Future Compliance. TNT shall comply with the MCWL, Chapter 644, RSMo, the MHWML within Chapter 260, RSMo, and their implementing regulations, at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC, TNT consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC, pursuant to Sections 621.250, 260.410, 260.412, 640.010, 640.013, 644.056, and 644.079, RSMo, 10 CSR 20-1.020, 10 CSR 20-6.020(5), 10 CSR 25-2.020, and Chapters 260, 536, 640, and 644, RSMo, the Missouri Constitution, or any other source of law. However, by signing this AOC, TNT does not waive any right to appeal or seek judicial review of any future decision by the Department.

VI. CORRESPONDENCE AND DOCUMENTATION

Future correspondence or documentation with regard to this AOC shall be directed to the following individuals, subject to change upon written notice from either party:

For the Department:

Ms. Corinne Rosania
Compliance and Enforcement Section
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

and

Mr. Evan Bryant
Compliance and Enforcement Section
Hazardous Waste Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

For TNT:

Mr. Thad Trump
TNT General Contracting, Inc.
RR 3 Box 78C
Kahoka, MO 63445

and

David A. Shorr
Lathrop & Gage, LLP
314 East High Street
Jefferson City, MO 65101

The Parties consent to the terms and conditions of this AOC by their duly authorized representative(s):

TNT GENERAL CONTRACTING, INC.



Thad G. Trump, President

1-22-14
Date

TNT TRUKN INC.



Thad G. Trump, President

1-22-14
Date

ENVIROMX INC.



Thad G. Trump, Vice President

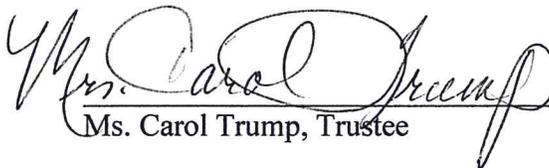
1-22-14
Date

GARY AND CAROL TRUMP TRUST (U/T/A)



Gary Trump, Trustee

1-22-14
Date

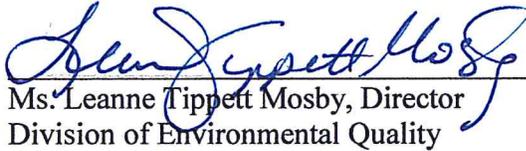


Ms. Carol Trump, Trustee

Jan. 22, 2014
Date

Agreed to and so Ordered:

DEPARTMENT OF NATURAL RESOURCES


Ms. Leanne Tippet Mosby, Director
Division of Environmental Quality

1/24/14
Date

Copies of the foregoing have been delivered to:

- c: Mr. David Shorr, Lathrop & Gage LLP, Counsel for TNT
- Ms. Diane Huffman, U.S. Environmental Protection Agency
- Mr. Chris Wieberg, Chief, Operating Permits Section, MDNR
- Ms. Janet Pointer, Accounting Specialist, Accounting Program, MDNR
- Ms. Irene Crawford, Director, Northeast Regional Office, MDNR
- Missouri Clean Water Commission

TNT General Contracting, Inc.
RR 3 Box 78C
Kahoka, MO 63445
660.727.4285 Office
660.727.4286 Fax
660.341.4998 Thad's Cell
tntrukn@centurytel.net

January 20, 2014

David Lamb, Director
Hazardous Waste Program
PO Box 176
Jefferson City, MO 65102

Re: Proposed Rulemaking – Secondary Zinc Materials

Dear Mr. Lamb:

It has been brought to our attention that the Program intends to propose a revision to the regulation 10 C.S.R. 25-4.261 which incorporates by reference the exemption found in 40 C.F.R 261.4 (a)(20) & (21) relating to the processing of secondary zinc materials. While we have not received or had the opportunity to review draft language regarding your proposed revision, you are advised that we will support a revision that removes the exemption from the current rules, provided the revision does not attempt to create retroactive liability.

Very truly yours,

TNT GENERAL CONTRACTING, INC.



Thad Trump