

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS

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UNITED STATES OF AMERICA,  
LOUISIANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY,  
THE STATE OF MARYLAND, and  
THE STATE OF NEVADA,

Plaintiffs,

v.

ABF FREIGHT SYSTEM, INC.,

Defendant.

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Civil No. 2:23-cv-02039-PKH

**COMPLAINT**

1. Plaintiffs, the United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), with respect to its claims under federal law; the Louisiana Department of Environmental Quality (“LDEQ”), acting with the concurrence of the Louisiana Attorney General, with respect to its claims under Louisiana law; the State of Maryland, by the authority of the Maryland Attorney General’s Office, with respect to its claims under Maryland law; and the State of Nevada, by the authority of the Nevada Attorney General’s Office, with respect to its claims under Nevada law, file this Complaint and allege as follows:

**NATURE OF ACTION**

2. This is a civil action for injunctive relief and civil penalties against ABF Freight System, Inc. (“ABF”) brought by the United States, LDEQ, Maryland, and Nevada. This action is brought by the United States pursuant to Clean Water Act (“CWA”) Section 309(b) and (d), 33 U.S.C. § 1319(b) and (d); LDEQ pursuant to the Louisiana Water Quality Control Law, La. R.S. 30:2074, *et seq.*; Maryland pursuant to the Maryland Water Pollution Control Law, Title 9,

Subtitle 3 of the Environment Article of the Annotated Code of Maryland; and Nevada pursuant to the Nevada Water Pollution Control Law, Nevada Revised Statutes 445A.300 to 445A.730, inclusive. ABF owns or operates transportation facilities of various sizes across the country including facilities known as

- Terminal 086 in Atlanta, GA;
- Terminal 089 in Lawrenceville, GA;
- Terminal 034 in South Chicago, IL;
- Terminal 050 in Indianapolis, IN;
- Terminal 082 in Jefferson, LA;
- Terminal 048 in Elkridge, MD;
- Terminal 140 in Las Vegas, NV;
- Terminal 067 in Cincinnati, OH; and
- Terminal 064 in Dayton, OH.

These listed terminals will be collectively referred to in this complaint as the ABF Facilities. At the ABF Facilities, ABF failed to comply with the conditions and limitations of permits for the discharge of stormwater issued by authorized state authorities pursuant to CWA Section 402, 33 U.S.C. § 1342.

### **JURISDICTION, VENUE, AND NOTICE**

3. This Court has jurisdiction over the subject matter of the United States' claims in this action pursuant to CWA Sections 309(b) and (d), 33 U.S.C. §§ 1319(b) and (d), and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has jurisdiction over the state law claims by LDEQ, the State of Maryland, and the State of Nevada pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

4. Venue is proper in this district pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391 and 1395, because ABF's principal office is located in this district.

5. The United States has provided notice of the commencement of this action to the States of Georgia, Illinois, Indiana, Louisiana, Maryland, Nevada, and Ohio in accordance with Section 309(b) of the Act, 33 U.S.C. § 1319(b).

6. Authority to bring this action is vested in the United States Department of Justice under 28 U.S.C. §§ 516 and 519.

7. Authority to bring this action on behalf of the State of Louisiana is vested in LDEQ under La. R.S. 36:231 with the concurrence of the Attorney General of the State of Louisiana, at the request of the Secretary of the LDEQ pursuant to La. R.S. 30:2025, La. R.S. 30:2050.7, and LAC 33:IX.507.

8. Authority to bring this action on behalf of the State of Maryland is vested in the Attorney General of Maryland under Md. Code Ann., Envir. § 9-344.

9. Authority to bring this action on behalf of the state of Nevada is vested in the Nevada Attorney General's Office under N.R.S. 445A.670 and 445A.675.

#### **DEFENDANT**

10. Defendant ABF is a corporation incorporated in Arkansas and with its principal office in Fort Smith, Arkansas.

11. ABF is a "person" as defined in CWA Section 502(5), 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2; and pursuant to La. R.S. 30:2004(8) and LAC 33:IX.107; Md. Code Ann., Envir. § 1-101(h); and N.R.S. 0.039.

12. ABF owns or operates each of the ABF Facilities.

13. The ABF Facilities are classified within Standard Industrial Code 4213 (establishments primarily engaged in furnishing “over-the-road” trucking services or trucking services and storage services, including household goods either as common carriers or under special or individual contracts or agreements, for freight generally weighing more than 100 pounds).

#### **LEGAL AUTHORITY**

14. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. 33 U.S.C. § 1251(a).

15. To accomplish these objectives, CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant” by any person except in certain circumstances, such as in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued by EPA, or an authorized state, pursuant to CWA Section 402, 33 U.S.C. § 1342.

16. CWA Section 502(12), 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” and the term “discharge of pollutants” as (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

17. CWA Section 502(14), 33 U.S.C. § 1362(14), defines a “point source” as “any discernable, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

18. CWA Section 402(p), 33 U.S.C. § 1342(p), requires a permit for stormwater discharges “associated with industrial activity.”

19. Under CWA Sections 308 and 402, 33 U.S.C. §§ 1318 and 1342, EPA promulgated regulations relating to the control of stormwater discharges at 40 C.F.R. § 122.26.

20. Pursuant to 40 C.F.R. § 122.26(b)(14)(viii), industrial activity requiring a permit under CWA Section 402 for associated stormwater discharges includes transportation facilities classified as Standard Industrial Classifications major group 42 (except 4221-25) that have vehicle maintenance shops or equipment cleaning operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14)(i)-(vii) or (ix)-(xi) of Section 122.26 are associated with industrial activity.

21. Pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), states may issue their own stormwater permits for discharges into navigable waters within their jurisdiction if they are authorized by EPA to do so. Any state-authorized permitting authority must include the requirements referenced in Paragraph 18 above in its NPDES permitting program. At all times relevant to this Complaint, the States of Georgia, Indiana, Louisiana, Maryland, Nevada, and Ohio were authorized by EPA to issue stormwater permits for discharges into navigable waters within their jurisdiction.

22. The analogous state laws of Louisiana, Maryland, and Nevada require a permit for discharges to state waters of stormwater associated with transportation facilities classified as Standard Industrial Classifications major group 42. La. R.S. 30:2075, LAC 33:IX.501 and 33:2701; Md. Code Ann., Envir. §§ 9-322 and 9-323; and N.R.S. 445A.475.

23. Under EPA's regulations, persons who discharge or who propose to discharge stormwater "associated with industrial activity" are required to apply for an individual permit or to seek coverage under a promulgated stormwater general permit. *See* 40 C.F.R. §§ 122.21(a), 122.26(c), 122.28, and 123.25.

### **FEDERAL ENFORCEMENT AUTHORITY**

24. If a state NPDES program is approved pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), the Administrator of EPA retains the authority to take enforcement action under CWA Section 309, 33 U.S.C. § 1319. CWA Section 402(i), 33 U.S.C. § 1342(i).

25. CWA Section 309(b), 33 U.S.C. § 1319(b), authorizes the Administrator of EPA “to commence a civil action for appropriate relief, including a permanent or temporary injunction,” when any person is in violation of 33 U.S.C. §§ 1311, 1318, or of any condition or limitation in a permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342, including state permits.

26. CWA Section 309(d), 33 U.S.C. § 1319(d), provides, in part, that any person who violates 33 U.S.C. §§ 1311, 1318, or any condition or limitation in a permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$64,618 per day for each such violation occurring after November 2, 2015, where penalties are assessed on or after January 6, 2023. 33 U.S.C. § 1319(d); 88 Fed. Reg. 986 (January 6, 2023) (codified at 40 C.F.R. pt. 19).

### **STATE ENFORCEMENT AUTHORITY**

27. Louisiana: Pursuant to La. R.S. 30:2025.B, C, and E, Louisiana is authorized to seek injunctive relief and civil penalties not to exceed \$32,500 for each day of any violation of any requirement of La. R.S. Title 30, Subtitle II (Environmental Quality), including violations of regulations at LAC 33:IX and the conditions of permits issued by Louisiana pursuant to those regulations.

28. Maryland: Pursuant to Md. Code Ann., Envir. §§ 9-342(a) and 9-339, Maryland is authorized to seek both injunctive relief and civil penalties not to exceed \$10,000 per violation of any rule, regulation, order, or permit adopted or issued under Md. Code Ann., Environment Title

9, Subtitle 3. Pursuant to and under Md. Code Ann., Envir. § 9-342(a) and 9-339, each day a violation occurs is a separate violation.

29. Nevada: Pursuant to N.R.S. 445A.695 and 700(1), ABF is liable for injunctive relief and civil penalties up to \$25,000 per day for each violation of Nevada's Water Pollution Control Law.

## **ALLEGATIONS**

### **A. Georgia**

30. Georgia issued National Pollutant Discharge Elimination System Permit No. GAR050000 for Discharges of Storm Water Associated with Industrial Activities with an effective date of June 1, 2017 and an expiration date of May 31, 2022 ("the 2017 Georgia General Permit"). The previous permit was effective from June 1, 2012 through May 31, 2017 ("the 2012 Georgia General Permit").

31. The 2012 and 2017 Georgia General Permits both state in Section 1.3.1 that any person wishing to obtain authorization to discharge under the general permit must submit a complete Notice of Intent ("NOI") to be authorized to discharge under the general permit.

32. The 2012 and 2017 Georgia General Permits both include requirements in Section 5 that facilities must implement and maintain the provisions of the Stormwater Pollution Prevention Plan ("SWPPP") as a condition of the permit.

33. The 2012 and 2017 Georgia General Permits both include requirements in Section 8.P applicable to facilities classified within Standard Industrial Code 4213.

#### **1. Terminal 086—Atlanta, GA**

34. At all relevant times, ABF has owned and operated a facility known as Terminal 086 located at 1165 Wilburn Road, Atlanta, Georgia.

35. On December 16, 2014, ABF submitted an NOI for discharges of stormwater associated with industrial activity from Terminal 086 to be covered by the 2012 Georgia General Permit.

36. On June 13, 2017, ABF submitted an NOI for discharges of stormwater associated with industrial activity from Terminal 086 to be covered by the 2017 Georgia General Permit.

**2. Terminal 089—Lawrenceville, GA**

37. At all relevant times, ABF has owned and operated a facility known as Terminal 089 located at 50 Boulder Brook Circle, Lawrenceville, Georgia.

38. On April 24, 2015, ABF submitted an NOI for discharges of stormwater associated with industrial activity from Terminal 089 to be covered by the 2012 Georgia General Permit.

39. On June 05, 2017, ABF submitted an NOI for discharges of stormwater associated with industrial activity from Terminal 089 to be covered by the 2017 Georgia General Permit.

**3. Georgia General Permit Requirements**

40. The 2012 and 2017 Georgia General Permits both include requirements in Section 2 that the permittee must adopt control measures to “minimize the exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow, snowmelt, and runoff by either locating these industrial materials and activities inside or protecting them with storm resistant coverings . . . .” Section 2.1.2.1. Additionally, Section 2 requires a permittee to adopt control measures for good housekeeping that “keep clean all exposed areas that are potential sources of pollutants” and spill prevention and response procedures that “minimize the potential for leaks, spills, and other releases that may be exposed to stormwater and develop plans for effective response to such spills if or when they occur.” Section 2.1.2.



41. The 2012 and 2017 Georgia General Permits both include requirements in Section 3 applicable to Corrective Actions, including a requirement that, within 30 days of discovery during a routine facility inspection, quarterly visual assessment, or comprehensive site inspection that control measures are not being properly operated and maintained, the permittee must document certain information, such as a summary of corrective action taken, the date corrective action is initiated, and the date corrective action is completed or expected to be completed. Section 3.4.1.1 of the 2012 Georgia General Permit; Section 3.5 of the 2017 Georgia General Permit.

42. The 2012 and 2017 Georgia General Permits both include requirements in Section 4.1.1 that the permittee must conduct routine facility inspections at least once per calendar quarter. During a routine facility inspection, a permittee must look for “a visible sheen” in “containment areas and oil/water separator discharge.” 2012 Georgia General Permit Section 4.1.1.1; 2017 Georgia General Permit Section 4.1.1.a. Additionally, the permittee must document the findings (*e.g.*, “[a]ny previously unidentified discharges of pollutants from the facility for the previous three years.”) of each routine facility inspection performed and maintain this documentation onsite with the SWPPP.” Section 4.1.2.

43. The 2012 and 2017 Georgia General Permits both include requirements in Section 4.2.1 that the permittee must conduct visual monitoring of a sample from each outfall at least once per calendar quarter. The visual assessment must be made:

- a. On a sample in a clean, clear glass or plastic container and examined in a well-lit area;
- b. On samples collected within the first 30 minutes of an actual discharge from a storm event . . . ; and

c. For storm events, on discharges that occur at least 72 hours from the previous discharge.

The permittee must document the results of visual assessments and maintain this documentation onsite with the SWPPP. Section 4.2.2.

44. The 2012 and 2017 Georgia General Permits both include requirements in Section 4.3 that the permittee must conduct annual comprehensive site inspections. Annual comprehensive site inspections requires the permittee to: make a “[c]ertification that all outfalls have been visually tested or evaluated at least once each year for the presence of non-stormwater discharges . . . .” Section 4.3.2. Permittees are also required to document the findings of each annual comprehensive site inspection and maintain this documentation onsite with the SWPPP, and the minimum requirements for documentation include “[a] statement signed and certified in accordance with Appendix B.7 of the permit.” Section 4.3.2.1.g of the 2012 Georgia General Permit; Section 4.3.3.g of the 2017 Georgia General Permit.

45. The 2012 and 2017 Georgia General Permits both include requirements in Sections 5 and 8.P that a permittee’s SWPPP include the identification of the staff members comprising “the facility’s stormwater pollution prevention team as well as their individual responsibilities.” Additionally, the permittee is required to “train all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of this permit” and specifies the topics to be covered by the training. 2012 and 2017 Georgia General Permits Section 5.1.1.1 & 2. Employees must be trained at a minimum of once per year “and address the following activities, as applicable: used oil and spent solvent management; fueling procedures; general

good housekeeping practices; proper painting procedures; and used battery management.” 2012 and 2017 Georgia General Permits, Section 8.P.3.8

46. The 2012 and 2017 Georgia General Permits include a requirement in Section 5.1.2 that the SWPPP include a site map that includes certain enumerated items, including the location of all: existing structural control measures; receiving waters in the immediate vicinity of the facility; stormwater conveyances; potential pollutant sources identified under Part 5.1.3.2; and stormwater outfalls which discharge stormwater associated with industrial activity.

47. The 2012 and 2017 Georgia General Permits include a requirement in Section 8.P that the permittee must prepare a drainage area site map that “[i]dentif[ies] in the SWPPP the following areas of the facility and indicate whether activities occurring there may be exposed to precipitation/surface runoff: Fueling stations; vehicle/equipment maintenance or cleaning areas; storage areas for vehicle/equipment with actual or potential fluid leaks; loading/unloading areas; areas where treatment, storage or disposal of wastes occur; liquid storage tanks; processing areas; and storage areas.” 2012 and 2017 Georgia General Permits, Section 8.P.4.1.

#### **4. Inspections of Terminals 086 and 089**

##### **i. Terminal 086—Atlanta, GA**

48. On August 16, 2017, EPA conducted an inspection at Terminal 086, and, at the time of the inspection, ABF was not in compliance with the following requirements of the 2012 and 2017 Georgia General Permits:

a. ABF failed to implement all required control measures to minimize the exposure of manufacturing, processing, and material storage areas, including locating an uncontained and uncovered aggregate stockpile on the impervious surface directly adjacent to the storm drain in the southwest corner of the facility.

b. ABF failed to implement all required control measures for good housekeeping, including locating multiple dumpsters throughout the facility that were uncovered and damaged (including an uncovered and damaged municipal waste dumpster in the west area of the facility and an uncovered and damaged scrap metal dumpster outside the maintenance building in the northwest area of the facility).

c. ABF failed to implement all required control measures for spill prevention and response procedures, including placing herbicide storage containers (containing product) without a cover or secondary containment adjacent to a 4-slot storm drain; storing a leaky hydraulic applicator without secondary containment upgradient from the 4-slot storm drain; not removing petroleum products that were staining an uncovered impervious surface; storing multiple 55-gallon drums containing grease and coolant (including one drum of coolant without a bung cap) without a cover or secondary containment on the impervious surface to the north of the vehicle maintenance building; and storing an uncovered 5-gallon bucket containing an unidentified orange, viscous fluid without cover or secondary containment on the impervious surface to the north of the vehicle maintenance building.

d. ABF failed to include all required documentation relating to corrective actions associated with findings of routine facility inspections, including omission of implementation dates for corrective actions.

e. ABF failed to include in the SWPPP all required documentation of certifications from annual comprehensive site inspections that all outfalls have been visually tested or evaluated at least once each year for the presence of non-stormwater

discharges, including omission from the forms used to document the 2015 and 2016 annual comprehensive site inspections of documentation of the certification.

f. ABF failed to include or maintain all required documentation of employee training in the SWPPP or have it available onsite, including omission of documentation of the topics covered by the training or the names of employees who had been trained.

g. In the Terminal 086 site map, ABF failed to identify all required elements including omission of:

- i. Locations of existing structural control measures, including secondary containment;
- ii. Locations of certain receiving waters in the immediate vicinity;
- iii. Locations of certain stormwater conveyances;
- iv. Locations of potential pollutant sources, including dumpsters and herbicides;
- v. Locations of certain outfalls which discharge stormwater associated with industrial activity; and
- vi. Locations of non-stormwater discharges in areas associated with industrial activities, including locations for windshield washing and equipment/parts washing.

h. ABF failed to identify in the Terminal 086 SWPPP all areas at the facility where industrial materials or activities are exposed to stormwater, including omission from the SWPPP of areas where:

i. Vehicles were washed with detergent in the vehicle wash bay in the vehicle maintenance building in the northwest area of the facility.

Additionally, 55-gallon drums of cleaning chemicals were stored in the same bay;

ii. Truck windshields were washed in the vehicle maintenance bays at the same vehicle maintenance building. At the time of the inspection, wash water was migrating from the vehicle maintenance bays onto an adjacent uncovered impervious surface; and

iii. Acidic cleaner was stored in a decommissioned wash house in the north area of the facility.

**ii. Terminal 089—Lawrenceville, GA**

49. On August 15, 2017, EPA conducted an inspection at Terminal 089, and, at the time of the inspection, ABF was not in compliance with the following requirements of the 2012 and 2017 Georgia General Permits:

a. ABF failed to implement all required control measures for good housekeeping, including not covering open dumpsters and allowing trash and waste debris to accumulate at one of the facility's eastern loading/unloading bays.

b. ABF failed to implement all required control measures for spill prevention and response procedures, including allowing petroleum product staining on uncovered impervious surfaces; locating used oil and used oil filter containers that were not plainly labeled adjacent to the light maintenance storage shed; storing three used 55-gallon drums of petroleum product without containment and with one drum missing a bung cap; and locating trash and debris along with a container (approximately 3-gallon capacity) of oily waste without a cap within the facility stormwater detention basin located in the southeast corner of the facility.

c. ABF failed to include all required information about routine facility inspection in the documentation of the quarterly visual monitoring, including the omission during the period from the third quarter 2015 through second quarter 2017 of documentation of whether the inspector had looked for a visible sheen in the oil/water separator discharge.

d. ABF failed to conduct all quarterly visual monitoring of a sample in a clean, clear glass or plastic container, including use of a rusted metal container at Outfall #1 for sample collection and visual inspection.

e. ABF's documentation of the quarterly visual monitoring failed to include all required information, including the following information which was not recorded for each monitoring event for the period from the third quarter 2015 through second quarter 2017: the time (in days) since previous measurable event, and the estimated volume (in gallons) of discharge sampled.

f. ABF failed to include all required information required in the Terminal 089 SWPPP, including omission from the SWPPP of the names of the facility staff members comprising the facility's stormwater pollution prevention team.

g. ABF failed to include or maintain all required documentation of employee training in the SWPPP or have that documentation available onsite, including omission from the SWPPP of documentation that employees had been trained in any of the sector specific topics required by the 2012 and 2017 Georgia General Permits Section 8.P.3.8.

h. ABF failed to identify in the Terminal 089 site map all required items including:

i. the location of all existing structural control measures, including the omission of spill response supplies maintained for light maintenance activities in the storage sheds and canopy area of the site;

ii. the location of all stormwater conveyances, including the omission of five open stormwater conveyances draining stormwater runoff from the western portion of the facility's loading/unloading bays into an open stormwater drainage ditch and then to the onsite detention basin via a piped subsurface stormwater conveyance and the omission of two open concrete lined stormwater conveyances draining to the onsite detention basin; and

iii. the location of all potential pollutant sources, including omission of vehicle and equipment washing activities located on the northeastern paved surface of the facility, upgradient of storm drain CB-5.

i. ABF failed to identify in the Terminal 089 SWPPP all areas at the facility where industrial activities are exposed to stormwater, including omission from the SWPPP of the areas where vehicle washing activities were exposed to stormwater.

j. ABF failed to maintain and make readily available copies of all documents required, including not maintaining a copy of either the NOI or the general permit.

## **B. Illinois**

50. Illinois Environmental Protection Agency ("Illinois EPA") issued National Pollutant Discharge Elimination System No. ILR00 for Stormwater Discharges Associated with Industrial Activities with an effective date of April 5, 2017 and an expiration date of March 31, 2022 ("the 2017 Illinois General Permit"). The 2017 Illinois General Permit states in Part D.7 that for owners and operators who submit an NOI, authorization, if granted, will be by letter from the Agency and include a copy of the permit.



51. The 2017 Illinois General Permit includes a requirement in Section E.1 that the SWPPP shall be implemented by the permittee on an on-going basis.

52. The 2017 Illinois General Permit sets forth requirements in Attachment 1, Subpart P applicable to facilities classified within Standard Industrial Code 4213.

53. Part D.7.a of the 2017 Illinois General Permit states that when the 2017 Illinois General Permit expires the conditions of this permit shall be administratively continued until the earliest of specified occurrences. One specified occurrence is 150 days after a new Illinois General Permit is issued. As of the date of this filing, a new Illinois General Permit has not been issued and the 2017 Illinois General Permit continues in effect.

**1. Terminal 034—Sauk Village, IL**

54. At all relevant times, ABF has owned and operated a facility known as Terminal 034 located at 1900 Lincoln Highway, Sauk Village, Cook County, Illinois.

55. On March 5, 2015, ABF submitted an NOI to Illinois EPA for the Sauk Village facility. On May 5, 2017, Illinois EPA sent a notice to ABF regarding Terminal 034 stating that the facility was authorized to discharge under the 2017 Illinois General Permit and assigned permit authorization number ILR007338.

**2. Illinois General Permit Requirements**

56. The 2017 Illinois General Permit includes requirements in Part E.5 that the SWPPP shall provide a description of potential sources which may affect pollution concentration or quantities of pollutants to stormwater discharges. Additionally, the 2017 Illinois General Permit states in Attachment 1, Subpart P.2.1 that the Permit does not authorize the discharge of vehicle/equipment/surface wash water, and that such discharges must be authorized under a separate NPDES permit, discharged to a sanitary sewer, or recycled on site. The 2017 Illinois General Permit includes requirements in Attachment 1, Subpart P.4.4 that, if vehicle and

equipment washwater is not discharged pursuant to an NPDES permit or industrial user permit issued under a local pretreatment program, then the SWPPP must describe the disposal method for vehicle and equipment wash water and all pertinent documentation/information (*e.g.*, frequency, volume, destination) must be attached to the SWPPP.

57. The 2017 Illinois General Permit includes requirements in Part E.5.b that the SWPPP shall include a site map that includes certain enumerated items, such as the stormwater conveyance and discharge structures; an outline of the stormwater drainage areas for each stormwater discharge point, location, and identification of any MS4 to which the industrial site discharges stormwater; fueling stations; vehicle or product machinery related to industrial activity; and the location and sources of run-on to the site from adjacent properties that contain significant quantities of pollutants.

58. The 2017 Illinois General Permit includes requirements in Part E.8 that the permittee shall document that the discharge has been evaluated for the presence of unauthorized non-stormwater discharges. Documentation must include: the date of the evaluation; a description of the evaluation criteria used; a list of the outfalls or on-site drainage points that were directly observed during the evaluation; a description of the actions taken to prevent unauthorized discharges; or documentation that separate NPDES permit was obtained.

59. The 2017 Illinois General Permit includes requirements in Part E.9.b that the SWPPP must document maintenance, specifically procedures and frequencies for inspection and maintenance of stormwater conveyance systems such as oil/water separators. Additionally, the SWPPP must contain the schedule or frequency for maintaining all control measures.

60. 2017 Illinois General Permit Part F.2.a is titled “Minimize Exposure” and includes requirements that the permittee must minimize exposure of manufacturing, processing,

and material storage areas to rain, snow, snowmelt, and runoff by either locating these industrial materials and activities inside or protecting them from storm resistant coverings. To minimize exposure, where feasible, the permittee must include certain Best Management Practices (“BMPs”) including (where applicable): implementing storage within berms or other secondary containment devices to prevent leaks and spills from entering stormwater runoff; cleaning up spills and leaks promptly using dry methods or other cleanup methods to prevent the discharge of pollutants; and storing leaky vehicles and equipment indoors or, if stored outdoors, using drip pans and absorbents.

61. 2017 Illinois General Permit Part F.2.b is titled “Preventive Maintenance” and includes requirements that the permittee must have procedures and frequencies for inspection and maintenance of stormwater conveyance system devices such as oil/water separators, catch basins, etc., and inspection and testing of plant equipment and systems that could fail and result in discharges of pollutants to stormwater.

62. 2017 Illinois General Permit Part F.2.c is titled “Good Housekeeping and Pollution Prevention Practices” and includes requirements that good housekeeping requires the maintenance of clean, orderly facility areas that discharge stormwater. Material handling areas must be inspected and cleaned as necessary to reduce the potential for pollutants to enter the stormwater conveyance system. The permittee shall implement pollution prevention practices in areas that include trash containers, storage areas, loading docks, vehicle fueling, and maintenance.

63. 2017 Illinois General Permit Part F.2.d is titled “Spill Prevention and Response” and includes requirements that the permittee must minimize the potential for leaks, spills, and other releases that may be exposed to stormwater and develop plans for effective response to

such spills. The permittee must conduct spill prevention and response measures, including implementing procedures for material storage and handling, such as the use of secondary containment and barriers between material storage and traffic areas, or a similarly effective means designed to prevent the discharge of pollutants from these areas, and clean up spills as soon as possible. 2017 Illinois General Permit Part F.2.d.ii.

64. The 2017 Illinois General Permit includes requirements in Part F.2.g that the permittee must train all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of this permit, including all pollution prevention personnel. Employees must be trained at a minimum of once per calendar year.

65. The 2017 Illinois General Permit includes requirements in Part G.2 that the permittee must document the findings of the facility inspections and maintain this report with its SWPPP. The 2017 Illinois General Permit includes requirements in Part E.16.d that the permittee must keep all inspection reports with the SWPPP, including routine facility inspection reports.

66. The 2017 Illinois General Permit in Part H.1 enumerates conditions that require a SWPPP revision, including that control measures are not stringent enough for the discharge to meet the conditions of this permit. The 2017 Illinois General Permit includes requirements in Part H.2.c that the permittee must document the existence of any of the conditions listed in Part H.1 within 24 hours of becoming aware of such condition. Documentation must include the corrective actions taken that occurred as a result of the conditions listed in Part H.1, within 14 days from the time of discovery of any of those conditions. In addition, the permittee must provide the dates when each corrective action was initiated and completed (or is expected to be completed).

67. The 2017 Illinois General Permit includes requirements in Part J.1.that the permittee must perform and document a quarterly visual observation of a stormwater discharge associated with industrial activity from each outfall. The permittee is required to sign and certify the documentation.

68. The 2017 Illinois General Permit includes requirements in Attachment 1, Subpart P.3.1.5 that the permittee must minimize contamination of stormwater runoff from all areas used for vehicle/equipment maintenance and to implement appropriate control measures, such as performing maintenance activities indoors and using drip pans.

**3. Inspection of Terminal 034—Sauk Village, IL**

69. On September 12, 2017, EPA conducted an inspection at Terminal 034, and, at the time of the inspection, ABF was not in compliance with the following requirements of the 2017 Illinois General Permit:

a. ABF failed to conduct all required preventative maintenance, including allowing sediment and gravel to accumulate inside the storm sewer pipe outlet located at Outfall 003 and placing a stockpile of excavated material at Outfall 001.

b. ABF failed to fully implement good housekeeping and pollution prevention practices, including:

i. allowing sediment and trash to accumulate on the impervious surfaces along the facility's southern-central perimeter near the maintenance building located upgradient of a flowing swale and Outfalls 002 and 003; and

ii. allowing multiple rusted metal seals from tractor trailer doors to accumulate on paved trailer parking areas, which were in close proximity to storm drains.

c. ABF failed to minimize exposure of certain activities to rain, snow, snowmelt, and runoff and to minimize the potential for leaks, spills, and other releases, including conducting activities that resulted in petroleum staining of the pavement both on paved areas around the facility's maintenance building and also at the vehicle/equipment parking areas along the facility's southern perimeter.

d. ABF failed to include a description of all potential sources of pollutants in the Terminal 034 SWPPP, including omission of vehicle washing outdoors on paved areas and exposed, grease-covered fifth wheels stored outdoors on wooden pallets.

e. The Terminal 034 SWPPP states in Section 5.1 that "[t]he Non-Stormwater Discharge Evaluation and Certification form (Appendix E) will be signed by the facility and maintained in Appendix F [of the SWPPP]." ABF failed to document that it had conducted visual evaluations of outfalls for the presence of non-stormwater discharges, including a blank Non-Storm Water Discharge Evaluation and Certification form attached to the Terminal 034 SWPPP.

f. In the Terminal 034 site map, ABF failed to identify all required elements including:

i. All existing stormwater structural control measures implemented at the facility including omission from the site map of a storm pipe inlet/outlet and a vegetated stormwater conveyance swale;

ii. All stormwater discharge points from industrial areas of the facility including omission from the site map of areas of flow over and discharge points from the paved areas along the southern perimeter of the facility's impervious area;

iii. All fueling stations, including omission from the site map of the fueling bay located on the north side of the facility's maintenance building;

iv. All vehicle or product machinery related to industrial activity, including omission from the site map of areas used to store tractors and converter gears; and

v. All locations and sources of stormwater run-on from adjacent properties that contain significant quantities of pollutants, including omission from the site map of the neighboring trucking facility located southeast of Terminal 034, which has a smaller stormwater pond that has the potential to discharge to ABF's stormwater pond.

g. ABF failed to include in the Terminal 034 SWPPP all required procedures and frequency for maintaining control structures, including omission from the SWPPP of procedures or a schedule for maintaining the onsite oil/water separator located in the facility's maintenance building.

h. ABF failed to provide annual training to all required employees at Terminal 034, including not providing training to the facility's maintenance supervisor.

i. ABF failed to conduct quarterly visual observations at all designated monitoring points at Terminal 034, including not conducting quarterly visual monitoring at Outfall 003.

j. ABF failed to maintain all inspection reports with the Terminal 034 SWPPP, including omission from the SWPPP of an inspection report for a quarterly routine inspection conducted on March 3, 2015.

k. ABF failed to document all corrective actions taken as a result of issues identified during quarterly and annual facility inspections, including omission of documentation of corrective actions for pre-shift housekeeping despite several inspections identifying the need for pre-shift housekeeping.

### **C. Indiana**

70. The Indiana Department of Environmental Management (“IDEM”) regulates stormwater discharges associated with industrial activities by permit by rule at Title 327, Article 15, Rule 6 (Storm Water Discharges Exposed to Industrial Activity) of the Indiana Administrative Code (“IAC”) (“the Indiana General Permit”).

71. The Indiana General Permit states in Section 15-2-5 that a person seeking authorization to discharge under a general permit issued by Indiana must submit an NOI. The Indiana General Permit states in Section 15-6-10 that a general permit for stormwater discharges exposed to industrial activity is valid for a period of five years from the date the NOI is received. The Indiana General Permit states in Section 15-11-h that coverage under the Indiana General Permit can be terminated by submitting a Notice of Termination.

72. The Indiana General Permit states in Section 15-6-7.(a) that the person having financial responsibility or operational control of a facility regulated under this rule must develop implement, update, and maintain a SWPPP.

#### **1. Terminal 050—Indianapolis, IN**

73. Prior to transfer of operations to a different location on or about June 14, 2019 and closure of operations at this location, ABF owned and operated a facility known as Terminal 050 located at 1235 & 1260 Terminal Road, Indianapolis, Marion County, Indiana.

74. On or about March 16, 2015, ABF submitted an initial NOI for Terminal 050.

75. On or about July 25, 2016, ABF submitted a renewal NOI for Terminal 050.



76. On or about June 17, 2019, ABF submitted a Notice of Termination request to IDEM due to closure of the facility. By letter dated July 24, 2020, IDEM notified ABF that it had accepted the Notice of Termination for Terminal 050.

## **2. Indiana General Permit Requirements**

77. The Indiana General Permit includes requirements in Section 15-6-7.b(3) that a facility's SWPPP must include a map and a description of all areas of the facility that generate stormwater discharges exposed to industrial activity and have a reasonable potential for stormwater to be exposed to pollutants. At a minimum, the SWPPP must contain a graphical representation, including all on-site stormwater drainage and discharge conveyances, which may include pipes, ditches, swales, and erosion channels, related to a stormwater discharge; an outline of the drainage area for each stormwater outfall; an outline of the facility property indicating directional flows, via arrows, of surface drainage patterns; and an outline of impervious surfaces, which includes pavement and buildings, and an estimate of the impervious and pervious surface square footage for each drainage area placed in a map legend.

78. The Indiana General Permit includes requirements in Section 15-6-7.c(1)(B) that for areas of the facility that generate stormwater discharges and have a reasonable potential for stormwater exposure to pollutants, stormwater must be minimized. To ensure this reduction, the Indiana General Permit in Section § 15-6-7.c(1)(A) specifies practices and measures that must be planned and implemented including implementation of good housekeeping practices to ensure the facility will be operated in a clean and orderly manner and that pollutants will not have the potential to be exposed to stormwater via vehicular tracking or other means.

**3. Inspection of Terminal 050—Indianapolis, IN**

79. On September 29, 2017, EPA conducted an inspection at Terminal 050, and, at the time of the inspection, ABF was not in compliance with the following requirements of the Indiana General Permit:

- a. ABF failed to identify all stormwater outfalls in the site map, including incorrectly describing Outfall 003, which was an outfall, as a storm drain.
- b. ABF failed to include all required elements in the site map, including omitting from the site map an outline of the drainage area for each stormwater outfall and omission from the outline of the facility property of the facility's retention pond.
- c. ABF failed to identify all on-site stormwater drainage and discharge conveyances implemented at the facility in the site map, including omission from the site map of a grassy ditch located in the center of the facility and a piped stormwater conveyance under a paved pathway connecting the north and south impervious areas of the facility.
- d. Section 4.4 of the Terminal 50 SWPPP required that "[f]loatable trash will be picked up and properly disposed as needed, during business hours." Section 4.4.1 of the Terminal 050 SWPPP stated that good housekeeping measures include "[r]emoving fine solids/dust by vacuuming or sweeping." ABF failed to implement all good housekeeping measures required by the SWPPP, including allowing litter to accumulate around the perimeter fence in the northeast area of the facility near Outfall 003 and allowing dust buildup and debris to accumulate under and around a dumpster on the north side of the southern truck terminal.

**D. Louisiana**

80. LDEQ issued Louisiana Pollutant Discharge Elimination System (“LPDES”) Permit No. LAR050000 for Storm Water Discharges Associated with Industrial Activities with an effective date of May 9, 2016, and an expiration date of May 9, 2021 (“the 2016 Louisiana General Permit”). The 2016 Louisiana General Permit in Part 1.8 provided that permittees authorized under the prior general permit are automatically authorized to discharge under the re-issued permit upon written notification from LDEQ. The 2016 Louisiana General Permit in Part 6, Sector P sets forth requirements applicable to facilities classified within Standard Industrial Code 4213.

81. The 2016 Louisiana General Permit in Part 1.12 provides that if the permit expired before being reissued, LDEQ would administratively extend the permit to discharge for permittees that were covered prior to the expiration, until authorization to discharge under a reissued permit is obtained.

82. On October 27, 2021, the 2016 Louisiana General Permit was superseded by the current permit. LDEQ issued a minor modification of that permit effective December 9, 2021 (“the 2021 Louisiana General Permit”). The 2021 Louisiana General Permit in Part 1.8 provides that permittees authorized under the prior general permit are automatically authorized to discharge under the re-issued permit upon written notification from LDEQ. The 2021 Louisiana General Permit in Part 6, Sector P sets forth requirements applicable to facilities classified within Standard Industrial Code 4213.

**1. Terminal 082—Jefferson, LA**

83. At all relevant times, ABF has owned and operated a facility known as Terminal 082 located at 400 Shrewsbury Road, Jefferson, Louisiana.

84. ABF first submitted an NOI for stormwater discharges associated with industrial activity at Terminal 082 on February 6, 1996, and Terminal 082 was authorized to discharge under subsequent Louisiana general permits.

85. On September 9, 2016, LDEQ sent a notice to ABF regarding Terminal 082 stating that the facility was authorized to discharge under the 2016 Louisiana General Permit.

86. On December 29, 2021, LDEQ sent a notice to ABF regarding Terminal 082 stating that the facility was authorized to discharge under the 2021 Louisiana General Permit.

## **2. Louisiana General Permit Requirements**

87. The 2016 and 2021 Louisiana General Permits both include requirements in Part 3.1.1 that the permittee, in minimizing exposure, must pay particular attention to, *inter alia*, performing all cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and that capture any overspray, and must also ensure that all wash water drains to a proper collection system (i.e., not the stormwater drainage system).

88. The 2016 and 2021 Louisiana General Permits both include requirements in Part 3.1.2 that the permittee must keep clean all exposed areas that are potential sources of pollutants.

89. The 2016 and 2021 Louisiana General Permits both include requirements in Part 3.1.5 that the permittee must stabilize exposed areas and contain runoff using structural and/or non-structural control measures to minimize onsite erosion and sedimentation and the resulting discharge of pollutants. The permittees must also place flow velocity dissipation devices at discharge locations and within outfall channels where necessary to reduce erosion and/or settlement of pollutants.

90. The 2016 and 2021 Louisiana General Permits both include requirements in Part 3.2.5 that the permittee must collect and conduct a visual assessment of a stormwater sample from each outfall once per quarter for the entire permit term.

91. The 2016 and 2021 Louisiana General Permits both include requirements in Part 4 that the permittee must prepare a SWPPP that documents the selection, design, and installation of control measures.

92. The 2016 and 2021 Louisiana General Permits both include requirements in Part 4.3.3 that the SWPPP must document areas at the facility where industrial materials or activities are exposed to stormwater.

93. The 2016 and 2021 Louisiana General Permits both include requirements in Part 6.P.1 that the permittee must have a drainage site map that identifies, *inter alia*, vehicle/equipment maintenance or cleaning areas.

94. The 2016 and 2021 Louisiana General Permits both include requirements in Part 6.P.3 that the permittee train personnel at least once a year on specified topics.

95. The 2016 and 2021 Louisiana General Permits both include requirements in Part 6.P.4.4 that the permittee must document in the SWPPP the measures implemented that are consistent with requirements including minimization of contamination of stormwater runoff from all areas used for vehicle and equipment cleaning through implementation of control measures, such as the following, where feasible (list not exclusive): performing all cleaning operations indoors; covering the cleaning operation, ensuring that all wash water drains to a proper collection system (i.e., not the stormwater drainage system unless LPDES permitted); treating and/or recycling collected wash water; or other equivalent measures.

96. The 2016 and 2021 Louisiana General Permits both include requirements in Part 8.B.3 that the permittee must 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 the permit at all times.

**3. Inspection of Terminal 082—Jefferson, LA**

97. On September 20, 2017, EPA and LDEQ conducted an inspection at Terminal 082, and, at the time of the inspection, ABF was not in compliance with the following requirements of the 2016 Louisiana General Permit:

a. ABF failed to have a site map that identified all existing stormwater structural control measures implemented at Terminal 082, including omission from the site map of a gravel berm along the northwestern fence line of the facility.

b. ABF failed to have a site map that identified all stormwater outfalls, including omission from the site map of a culvert located in the public-right-of-way along Arnoult Road.

c. ABF failed to have a site map that identified all locations of potential pollutant sources and vehicle/equipment maintenance or cleaning areas, including omission from the site map of the tractor windshield washing area.

d. ABF failed to train personnel at least once a year on applicable topics, including not providing training to Terminal 082's mechanic.

e. ABF failed to collect and visually assess stormwater samples from all required outfalls, including not collecting and visually assessing a stormwater sample from Outfall 001.

f. ABF failed to fully implement requirements to stabilize exposed areas and contain runoff, including allowing sediment and gravel to discharge from Outfall 001 and accumulate in the Jefferson Parish storm drain along Arlington Avenue.

g. ABF failed to fully implement all control measures to minimize contamination of stormwater runoff from all areas used for vehicle and equipment cleaning, including allowing windshield wash water to comeingle with pollutants (such as sediment, gravel, gravel dust, and trash) accumulated on the impervious surfaces along the facility's terminal building apron and to discharge offsite.

**E. Maryland**

98. Maryland issued General Permit No. 12-SWA (NPDES Permit No. MDR0000) for Discharges from Stormwater Associated with Industrial Activities with an effective date of January 1, 2014, and an expiration date of December 31, 2018 ("the 2014 Maryland General Permit"). The 2014 Maryland General Permit in Part I.H provides that the terms and conditions of the permit are automatically continued and remain fully effective and enforceable upon expiration until the applicable date specified under a reissued general permit.

99. The 2014 Maryland General Permit states that authorization to discharge is effective upon notification of registration from the Maryland Department of the Environment ("MDE").

100. Maryland issued General Permit No. 20-SW (NPDES Permit No. MDR0000) for Discharges from Stormwater Associated with Industrial Activities with an effective date of February 1, 2023 ("the 2023 Maryland General Permit"). The 2023 Maryland General Permit includes requirements in Part II.A and B that existing dischargers are required to submit an NOI within six months after the effective date of the permit. The 2023 Maryland General Permit states that authorization to discharge is effective upon notification of registration from MDE.

**1. Terminal 048—Elkridge, MD**

101. At all relevant times, ABF has owned and operated a facility known as Terminal 048 located at 6720 Washington Blvd, Elkridge, MD 21075.

102. On October 9, 2014, ABF submitted an NOI for discharge from stormwater associated with industrial activities under the 2014 Maryland General Permit. On January 8, 2015, MDE sent a letter to ABF regarding Terminal 048 providing notification that ABF's NOI had been accepted for registration under the 2014 Maryland General Permit and assigned permit authorization number MDR000559.

**2. Maryland General Permit Requirements**

103. The 2014 Maryland General Permit includes requirements in Part III.B.1 that the permittee must select, design, install, and implement control measures (including best management practices) to meet the nonnumeric effluent limits as described in the permit. Requirements for control measures specified in the permit include:

a. The permittee must minimize exposure of manufacturing, processing, and material storage areas to rain, snow, snowmelt, and runoff by either locating these industrial materials and activities inside or protecting them with storm resistant coverings. Part III.B.1.b(i).

b. The permittee must minimize the potential for leaks, spills, and other releases that may be exposed to stormwater and develop plans for effective response to such spills if or when they occur. Part III.B.1.b(iv). Minimum requirements include:

i. Procedures for plainly labeling containers (*e.g.*, “used oil”) that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur;



ii. Preventative measures such as barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling; and

iii. Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases.

c. The permittee must ensure that waste, garbage, and floatable debris are not discharged to receiving waters by keeping exposed areas free of such materials or by intercepting them before they are discharged. Part III.B.1.b.(xi).

104. The 2014 Maryland General Permit includes requirements in Part III.C.3.a that the permittee must document areas at the facility where industrial materials or activities are exposed to stormwater including a list of the industrial activities exposed to stormwater (for example, material storage).

105. The 2014 Maryland General Permit includes requirements in Part III.C.3.c that the permittee document (in the SWPPP) where potential spills and leaks could occur that could contribute pollutants to stormwater discharges, and the corresponding outfall(s) that would be affected by such spills and leaks. The permit further provides that the permittee must document all significant spills and leaks of oil or toxic or hazardous pollutants that actually occurred at exposed areas, or that drained to a stormwater conveyance, in the 3 years prior to the date the permittee prepared or amended the SWPPP.

106. The 2014 Maryland General Permit includes requirements in Part III.C.8 that the permittee keep certain inspection, monitoring, and certification records with the SWPPP, including a copy of the relevant portion of any other facility document referred to in the SWPPP, such as a Spill Prevention, Control and Countermeasure (“SPCC”) Plan.

107. The 2014 Maryland General Permit includes requirements in Part V.A.1 that, at least once per quarter, the permittee must conduct a site assessment that will review the effectiveness of the SWPPP and the facility inspections must be documented with a checklist or other summary.

108. The 2014 Maryland General Permit includes requirements in Part V.A.3 that, once each quarter, the permittee must collect a stormwater sample from each outfall and assess the sample visually. The permit also requires that the Quarterly Visual Monitoring Form found in Appendix B of the permit must be completed for each sample. The Appendix B form includes several fields to be filled out, including sample location, date/time collected, whether there was a qualifying storm event, the collector's name and title, and the examiner's name and title.

### **3. Inspections of Terminal 048—Elkridge, MD**

109. On October 6, 2016, MDE conducted an inspection at Terminal 048, and, at the time of the inspection, ABF was not in compliance with the following requirements of the 2014 Maryland General Permit:

- a. ABF failed to minimize exposure of all manufacturing, processing, and material storage areas to rain, snow, snowmelt, and runoff, including placing an uncovered disposal bin outside on the west side of the truck terminal.
- b. ABF failed to plainly label all containers that could be susceptible to spillage or leakage, including not clearly labelling barrels in the maintenance shop that, upon information and belief, contained petroleum products.
- c. ABF failed to maintain all required preventative measures, including placing tanks and barrels containing waste oil and anti-freeze on the floor without secondary containment.

d. ABF failed to fully implement all required procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases, including failure to place absorbent on a spill under the waste oil tank.

e. ABF failed to fully ensure that waste, garbage, and floatable debris are not discharged to receiving waters by keeping exposed areas free of such materials or by intercepting them before they are discharged, including allowing:

i. Trash associated with onsite operations to gather on the perimeter of the facility; and

ii. Refuse associated with onsite operations to gather on and around the grates of two storm drains on the northeast of the property (closest to the detention pond).

f. Upon information and belief, the Terminal 048 SWPPP referred to the facility's SPCC Plan. ABF failed to maintain with the SWPPP a copy of the relevant portion of all facility documents referred to in the SWPPP, including not maintaining with the SWPPP a copy of the relevant portions of the Terminal 048 SPCC Plan.

g. ABF failed to fully document with a checklist or other summary the quarterly site assessment to review the effectiveness of the SWPPP, including omission from the forms used to document the inspections any record regarding examination of the maintenance area or the material storage area.

h. ABF failed to completely fill out the Quarterly Visual Monitoring Form for each quarterly sample, including omissions of the date, time, inspector, or weather on the day the sample was collected from the Quarterly Visual Monitoring Forms for the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> quarterly inspections for 2015 and the 1<sup>st</sup> quarter of 2016.

110. On January 23, 2020, MDE conducted an inspection at Terminal 048, and, at the time of the inspection, ABF was not in compliance with the following requirements of the 2014 Maryland General Permit:

a. ABF failed to fully ensure that waste, garbage, and floatable debris are not discharged to receiving waters by keeping exposed areas free of such materials or by intercepting them before they are discharged, including refuse associated with onsite operations observed along the fence line that surrounds the facility.

b. ABF prepared or amended the Terminal 048 SWPPP including on January 9, 2020. ABF failed to maintain all required documentation of significant spills and leaks of oil or toxic or hazardous pollutants that actually occurred at exposed areas, or that drained to a stormwater conveyance, in the 3 years prior to the date the permittee prepared or amended the SWPPP, including omission from the SWPPP of the visible oil spill under the waste oil tank observed by MDE inspectors on October 6, 2016.

111. On July 22, 2021, MDE conducted an inspection at Terminal 048, and, at the time of the inspection, ABF was not in compliance with the following requirements of the 2014 Maryland General Permit:

a. ABF failed to fully document areas at the facility where industrial materials or activities are exposed to stormwater, including omission of pallets of salt bags stored in the maintenance area from the documentation.

b. ABF failed to minimize exposure of manufacturing, processing, and material storage areas to rain, snow, snowmelt, and runoff, including placing an open dumpster containing waste near the dock that was not protected with storm resistant covering.

c. ABF failed to fully implement all procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases, including not cleaning up spills onto the floor outside of secondary containment pallets servicing buckets and drums in the maintenance area.

d. ABF failed to maintain all required preventative measures, including placing drums on the floor of the maintenance area without secondary containment.

**F. Nevada**

112. Nevada issued Nevada Pollutant Discharge Elimination System No. NVR050000 for Stormwater Discharges Associated with Industrial Activities with an effective date of September 22, 2008 and an expiration date of September 21, 2013 (“the 2008 Nevada General Permit”). For new permittees, the 2008 Nevada General Permit in Section I.A.5.f.(ii).(a) provided that authorization to discharge under the permit was effective on the date the NOI and filing fee were received and approved by Nevada Department of Environmental Protection (“NDEP”).

113. The 2008 Nevada General Permit in Section IV.B.5 provided that this permit shall remain in effect until reissued, and existing permittees shall be included in the reissued permit if a new NOI is submitted prior to the expiration date of the 2008 permit.

114. On June 10, 2019, the 2008 Nevada General Permit was superseded by the current permit (“the 2019 Nevada General Permit”). The 2008 Nevada General Permit in Section 2.4.4 provided that, for existing dischargers who submit a renewal NOI within 60 calendar days of the effective date of the 2019 permit and receive an approval letter from NDEP, the 2019 permit is effective no later than 120 calendar days after the effective date of the general permit.

**1. Terminal 140—Las Vegas, NV**

115. At all relevant times, ABF has owned and operated a facility known as Terminal 140 located at 4501 North Lamb Boulevard, Las Vegas, Nevada.

116. On or about September 22, 2009, ABF submitted an NOI for Terminal 140 for coverage under the 2008 Nevada General Permit. On or about October 2, 2009, NDEP sent a notice to ABF regarding Terminal 140 stating that the submittal was approved.

117. On or about July 25, 2019, ABF submitted an NOI for Terminal 140 for coverage under the 2019 Nevada General Permit. On or about August 22, 2019, NDEP sent a letter to ABF regarding Terminal 140 stating that the submittal was approved.

## **2. Nevada General Permit Requirements**

118. The 2008 Nevada General Permit included requirements in Section I.A.5.j that if relevant information provided in the NOI changes (for example, phone number or P.O. Box number) a Notice of Change shall be submitted within 14 days of the change. The 2019 Nevada General Permit included requirements in Section 2.3.5 that if the contact information or addresses on the NOI change during the permit coverage, the permittee shall, within 15 calendar days of the change, submit a letter on official letterhead indicating the updated information.

119. The 2008 Nevada General Permit included requirements in Section II.B.1.d(i).(c), (g) & (m) that the permittee must have a site map depicting, *inter alia*, the location of each outfall covered by the permit, the location of all existing source and structural control BMPs that are designed to reduce pollution in stormwater runoff, and the location of storage areas where significant materials are exposed to precipitation or runoff. The 2008 Nevada General Permit includes requirements in Sections 6.2.2.3.5, 9, and 13.5 & 6 that the SWPPP shall contain a site map identifying, *inter alia*, the location of stormwater outfalls, the location of all existing structural control measures, and, where the activities are exposed to precipitation, the location of liquid storage tanks and storage areas.

120. The 2008 Nevada General Permit included requirements in Section II.B.1.o.(i) that a section within the SWPPP must be developed and implemented to prevent spills and to

provide adequate spill response. Requirements for this section of the SWPPP include that it must require that the permittee:

- a. Develop and implement procedures to minimize or prevent contamination of stormwater from spills (*e.g.*, installation of secondary containment structures around liquid storage tanks and drums). Section II.B.1.o.(i).(b);
- b. Develop and implement specific spill prevention and cleanup techniques. Section II.B.1.o.(i).(e); and
- c. Develop and maintain an inventory of spill cleanup materials and equipment. Section II.B.1.o.(i).(g).

The 2019 Nevada General Permit includes requirements in Section 3.2.5 related to minimization of the potential for leaks, spills, and other releases and development of plans for timely and effective clean-up of spills.

121. The 2008 Nevada General Permit included requirements in Section II.B.1.r.(i) and (iv) that training shall be provided to all employees who are responsible for implementing or maintaining activities identified in the SWPPP and that such training shall be conducted at least one time per year and records of training activities shall be maintained in the SWPPP. The 2019 Nevada General Permit includes requirements in Sections 3.2.9 and 6.2.5.1.5 related to employee training and documentation.

### **3. Inspections Terminal 140—Las Vegas, NV**

122. On April 25, 2019, NDEP conducted an inspection at Terminal 140, and, at the time of the inspection, ABF was not in compliance with the following requirements of the 2008 Nevada General Permit:

- a. ABF failed to timely submit all required Notices of Change when relevant information provided in the NOI changes, including failure to submit a Notice of Change when the facility's point of contact on the permit changed.
- b. ABF failed to have a site map depicting all required elements including:
  - i. The location of each outfall covered by the permit, including omission from the site map of three outfalls;
  - ii. The location of all existing source and structural control BMPs that are designed to reduce pollution in stormwater runoff, including failure to depict curbing that prevented stormwater from flowing offsite; and
  - iii. The location of storage areas where significant materials are exposed to precipitation or runoff, including multiple fluid storage containers throughout the facility.
- c. ABF failed to develop and implement all required procedures to minimize or prevent contamination of stormwater from spills, including by placing batteries outside in the maintenance area without secondary containment.
- d. ABF failed to implement all required spill prevention and cleanup techniques, including failure to clean up oil spills in truck bay and maintenance areas.
- e. ABF failed to maintain an inventory of all spill cleanup materials and equipment, including maintaining a spill kit near the fueling station that was empty.
- f. ABF failed to maintain all required records of training activities in the SWPPP, including the fact that the SWPPP included no documentation relating to training.



123. On May 17, 2019, NDEP conducted a follow-up inspection at Terminal 140, and, at the time of the inspection, ABF was not in compliance with all the requirements of the 2008 Nevada General Permit. Specifically, ABF had failed to implement all required spill prevention and cleanup techniques, including failure to clean up oil spills that were present in multiple locations site wide.

**G. Ohio**

124. On December 15, 2011, Ohio issued Ohio Pollutant Discharge Elimination System General Permit No. OHR000005 for Stormwater Discharges Associated with Industrial Activities with an effective date of January 1, 2012 and an expiration date of December 31, 2016 (“the 2012 Ohio General Permit”). The 2012 Ohio General Permit included requirements in Part 1.3.1 that a new discharger was required to submit an NOI at least 180 days prior to the planned commencement of stormwater discharge and authorization to discharge was effective when the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) authorized coverage.

125. The 2012 Ohio General Permit stated in Part 1.3.2. that, if the permit is not reissued or replaced prior to the expiration date, it will be administratively continued, and any discharges authorized under the permit prior to the expiration date will automatically remain covered by the permit until issuance of authorization for coverage under a reissued permit following timely and appropriate submittal of a complete NOI requesting authorization to discharge under the new permit and compliance with the requirements of the new permit.

126. Ohio issued Ohio Pollutant Discharge Elimination System General Permit No. OHR000006 for Stormwater Discharges Associated with Industrial Activities with an effective date of June 1, 2017 and an expiration date of May 31, 2022 (“the 2017 Ohio General Permit”). The 2017 Ohio General Permit included requirements in Part 1.3.1 that an existing

discharger must submit an NOI within 90 days after the permittee received notice from the Ohio Environmental Protection Agency (“Ohio EPA”) on the issuance of this permit and authorization to discharge was effective when the Director of the Ohio EPA authorized coverage.

127. The 2017 Ohio General Permit in Part 1.3.2 stated that any discharges authorized under the permit prior to the expiration date will automatically remain covered by the permit until issuance of authorization for coverage under a reissued permit following timely and appropriate submittal of a complete NOI requesting authorization to discharge under the new permit and compliance with the requirements of the new permit.

128. On May 18, 2022, Ohio EPA issued Ohio Pollutant Discharge Elimination System No. OHR000007 for Stormwater Discharges Associated with Industrial Activities with an effective date of June 1, 2022 (“the 2022 Ohio General Permit”). The 2022 Ohio General Permit includes requirements in Part 1.3.1 that an existing discharger is required to submit an NOI within 90 days after the effective date of the permit and authorization to discharge is effective when the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) authorizes coverage.

129. The 2012, 2017, and 2022 Ohio General Permits each include requirements in Part 8.p.1 that are applicable to facilities classified within Standard Industrial Code 4213.

**1. Terminal 064—Dayton, OH**

130. At all relevant times, ABF has owned and operated a facility known as Terminal 064 located at 8051 Center Point 70 Boulevard, Dayton, Montgomery County, Ohio.

131. At some time before March 9, 2015, ABF submitted an NOI for Terminal 064 as a new discharger under the 2012 Ohio General Permit. On or about March 27, 2015, Ohio EPA sent a letter to ABF regarding Terminal 064 approving ABF’s NOI to discharge under the 2012 Ohio General Permit and stating that authorization to discharge remains in effect until a renewal

general permit is issued and Ohio EPA has contacted the permittee in writing about submitting a new NOI for continuing coverage.

132. On or about June 14, 2017, Ohio EPA mailed ABF a renewal notice about submitting an NOI for continuing coverage for Terminal 064. On or about July 25, 2017, ABF submitted an NOI for Terminal 064 for renewal of coverage under the 2017 Ohio General Permit. On or about April 16, 2018, Ohio EPA sent a letter to ABF regarding Terminal 064 approving ABF's NOI to discharge under the 2017 Ohio General Permit with an effective date of May 1, 2018.

133. On or about August 16, 2022, ABF submitted an NOI for renewal of coverage under the 2022 Ohio General Permit for Terminal 064. On or about September 12, 2022, Ohio EPA sent a letter to ABF regarding Terminal 064 approving ABF's NOI to discharge under the 2022 Ohio General Permit with an effective date of September 12, 2022.

## **2. Terminal 067—West Chester, OH Facility**

134. At all relevant times, ABF has owned and operated a facility known as Terminal 067 located at 6290 Allen Road, West Chester, Butler County, Ohio.

135. On or about March 5, 2015, ABF submitted an NOI for Terminal 067 as a new discharger under the 2012 Ohio General Permit. On or about March 27, 2015, Ohio EPA sent a letter to ABF regarding Terminal 067 approving ABF's NOI to discharge under the 2012 Ohio General Permit and stating that "[c]overage remains in effect until a renewal general permit is issued and Ohio EPA has contacted you in writing about submitting a new NOI for continuing coverage."

136. On June 14, 2017, Ohio EPA mailed ABF a renewal notice about submitting an NOI for continuing coverage for Terminal 067. On or about July 25, 2017, ABF submitted an NOI for Terminal 067 for renewal of coverage under the 2017 Ohio General Permit. On or about

April 16, 2018, Ohio EPA sent a letter to ABF regarding Terminal 067 approving ABF's NOI to discharge under the 2017 Ohio General Permit with an effective date of May 1, 2018.

137. On or about August 29, 2022, ABF submitted an NOI for renewal of coverage under the 2022 Ohio General Permit for Terminal 067. On or about September 20, 2022, Ohio EPA sent a letter to ABF regarding Terminal 067 approving ABF's NOI to discharge under the 2022 Ohio General Permit with an effective date of September 20, 2022.

### **3. Ohio General Permit Requirements**

138. The 2012, 2017, and 2022 Ohio General Permits each include requirements in Part 2.1.2.4 that the permittee minimize the potential for leaks, spills, and other releases that may be exposed to stormwater and develop plans for effective response to such spills if or when they occur. The permits also require that, at a minimum, the permittee must implement procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases.

139. The 2012, 2017, and 2022 Ohio General Permits each include requirements in Part 2.1.2.7 that the permittee enclose or cover storage piles of salt, or piles containing salt, used for deicing or other commercial or industrial purposes, including maintenance of paved surfaces.

140. The 2012, 2017, and 2022 Ohio General Permits each include requirements in Part 2.1.2.9 that the permittee must train all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of this permit (*e.g.*, inspectors, maintenance personnel), including all members of the Pollution Prevention Team. The permits further require that training must cover both the specific control measures used to achieve the conditions in Part 2 of the permits, and monitoring, inspecting, planning, reporting, and documenting requirements in other parts of the permits. The permits also require the permittee to conduct training at least annually (or more often if employee turnover is high).

141. The 2012, 2017, and 2022 Ohio General Permits each include requirements in Part 2.1.2.11 that the permittee must ensure that waste, garbage, and floatable debris are not discharged to receiving waters by keeping exposed areas free of such materials or by intercepting them before they are discharged.

142. The 2012, 2017, and 2022 Ohio General Permits each include requirements in Part 4.2.1 that the permittee, once each calendar quarter for the entire permit term, shall collect a stormwater sample from each outfall and conduct a visual assessment of each of these samples (with certain exceptions not relevant here).

143. The 2012, 2017, and 2022 Ohio General Permits each include requirements in Part 5.1.2 that the SWPPP include a site map that includes certain enumerated items, such as the size of the property in acres; the location and extent of significant structures and impervious surfaces; the location of any substantially identical outfalls; locations of stormwater conveyances, including ditches, pipes, and swales; and locations of existing structural control measures.

144. The 2012, 2017, and 2022 Ohio General Permits each include requirements in Part 5.1.3.4 that the permittee document in the SWPPP that it has evaluated for the presence of non-stormwater discharges and that all unauthorized discharges have been eliminated. The permits provide a list of items the documentation of the evaluation must include.

145. The 2012, 2017, and 2022 Ohio General Permits each include requirements in Part 5.1.3.5 that the permittee shall document in the SWPPP the location of any storage piles containing salt used for deicing or other commercial or industrial purposes.

146. The 2012, 2017, and 2022 Ohio General Permits each include requirements in Part 8.P.3.2 that the permittee train personnel at least once a year and address the following

activities, as applicable: used oil and spent solvent management; fueling procedures; general good housekeeping practices; proper painting procedures; and used battery management.

147. The 2012, 2017, and 2022 Ohio General Permits each include requirements in Part 8.P.4.2 that the permittee must assess the potential for the following areas to contribute pollutants to stormwater discharges: onsite waste storage or disposal; dirt/gravel parking areas for vehicles awaiting maintenance; illicit plumbing connections between shop floor drains and the stormwater conveyance system(s); and fueling areas. The permits also require the permittee to describe these activities in the SWPPP.

148. The 2012, 2017, and 2022 Ohio General Permits each include requirements in Part 6 that the permittee shall collect and analyze stormwater samples and document monitoring activities consistent with the procedures described in, *inter alia*, Appendix B, Subsections 10-12. In each of the permits, Appendix B, Part B.10.A requires that samples and measurements taken for the purpose of monitoring must be representative of the volume and nature of the monitored activity.

#### **4. Inspections of Terminal 064 and Terminal 067**

##### **i. Terminal 064–Dayton, OH**

149. On September 28, 2017, EPA conducted an inspection at Terminal 064, and, at the time of the inspection, ABF was not in compliance with the following requirements of the 2017 Ohio General Permit:

a. ABF failed to include all required elements in the site map, including the size of the property in acres, the location and extent of impervious surfaces, the locations of all stormwater pipes, and the locations of certain existing structural control measures such as the secondary containment for two above ground diesel fuel storage tanks.

b. ABF failed to conduct all required employee training, including failing to perform training on all required topics in 2015, 2016, and 2017 including omission of the following topics: good housekeeping measures, best management practices, goals of the SWPPP, contacting the pollution prevention team, used oil and spent solvent management, fueling procedures, proper painting procedures, and used battery management.

c. ABF failed to ensure that all samples used for quarterly visual assessments of stormwater discharges representative of the overall stormwater discharges from Terminal 064, including samples taken at Outfall 002 did not include stormwater runoff that flows to storm drain inlets on the northwest side of the truck terminal.

d. ABF failed to implement all required procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases, including not fully cleaning up a spill that caused green-colored staining on an impervious surface adjacent to a trailer on the south side of the truck terminal.

e. ABF failed to keep all exposed areas free of debris, including disposing of metal trailer seals on the ground of the facility.

f. ABF failed to adequately document its evaluation of the potential for illicit connections between floor drains and the separate stormwater sewer system, including the fact that on the day of the inspection facility personnel were unable to inform inspectors whether the oil/water separator in the maintenance shop discharges to a storm or a sanitary sewer.

**ii. Terminal 067–West Chester, OH**

150. On September 27, 2017, EPA conducted an inspection at Terminal 067, and, at the time of the inspection, ABF was not in compliance with the following requirements of the 2017 Ohio General Permit:

a. ABF failed to include all required elements in the site map, including the size of the property in acres, the location and extent of impervious surfaces, the locations of all stormwater conveyances, and an outfall along the western side of the facility.

b. ABF failed to accurately document in the SWPPP the location of any storage piles containing salt used for deicing or other commercial or industrial purposes, including in portions of the SWPPP that stated that salt was not stored on site even though salt storage was observed in the northwest portion of the facility and the site map indicated salt storage.

c. ABF failed to fully document in the SWPPP that the facility had been evaluated for the presence of non-stormwater discharges and that all unauthorized discharges had been eliminated, including the fact that on the day of the inspection the “Non-Storm Water Discharge Evaluation and Certification” form in the SWPPP was blank and had not been completed.

d. ABF failed to conduct all required quarterly visual assessments, including not conducting quarterly visual assessments at the outfall along the western side of the facility.

e. ABF failed to ensure that all exposed areas were free of debris, including allowing accumulation on site of the trash and debris caught in the inlet grate of Outfall 002.



f. ABF failed to fully comply with requirements to enclose or cover its salt piles, including the fact that on the day of the inspection an onsite salt storage area was not covered or fully enclosed.

g. ABF failed to expeditiously stop, contain, or clean up leaks, spills, and other releases, including failing to fully clean up spills present on the day of the inspection that resulted in numerous petroleum product stains on the impervious surface adjacent to the west side of the maintenance shop.

### **CLAIM FOR RELIEF**

151. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 150.

152. Each day of each failure by ABF to comply with the requirements listed in Paragraph 48 at Terminal 086 in Atlanta, Georgia, and Paragraph 49 at Terminal 089 in Lawrenceville, Georgia, is a violation of the 2017 Georgia General Permit.

153. Each day of each failure by ABF to comply with the requirements listed in Paragraph 69 at Terminal 034 in Sauk Village, Illinois, is a violation of the 2017 Illinois General Permit.

154. Each day of each failure by ABF to comply with the requirements listed in Paragraph 79 at Terminal 050 in Indianapolis, Indiana, is a violation of the Indiana General Permit.

155. Each day of each failure by ABF to comply with the requirements listed in Paragraph 97 at Terminal 082 in Jefferson, Louisiana, is a violation of the 2016 Louisiana General Permit.

156. Each day of each failure by ABF to comply with the requirements listed in Paragraphs 109, 110, and 111 at Terminal 048 in Elkridge, Maryland, is a violation of the 2014 Maryland General Permit.

157. Each day of each failure by ABF to comply with Paragraphs 122 and 123 at Terminal 140 in Las Vegas, Nevada, is a violation of the 2008 Nevada General Permit.

158. Each day of each failure by ABF to comply with Paragraph 149 at Terminal 064 in Dayton, Ohio, and Paragraph 150 at Terminal 067 in West Chester, Ohio, is a violation of the 2017 Ohio General Permit.

159. Unless enjoined by this Court, violations by ABF identified in Paragraphs 152 through 158 will continue.

160. Each violation of a permit condition or limitation is a separate violation of the NPDES permits referred to in this Claim for Relief and the CWA. For each violation of a condition or limitation of the NPDES permits referred to in this Claim for Relief, the United States is entitled to injunctive relief, as well as civil penalties for each day of each violation, pursuant to CWA Section 309, 33 U.S.C. § 1319.

161. As described in Paragraph 27, for each violation referred to Paragraph 155, Louisiana is entitled to injunctive relief, as well as civil penalties, pursuant to La. R.S. 30:2025.B, C, and E.

162. As described in Paragraph 28, for each violation referred to Paragraph 156, Maryland is entitled to injunctive relief, as well as civil penalties, pursuant to Md. Code Ann., Envir. §§ 9-342(a) and 9-339.

163. As described in Paragraph 29, for each violation referred to Paragraph 157, Nevada is entitled to injunctive relief, as well as civil penalties, pursuant to N.R.S. 445A.695 and 700(1).

**PRAYER FOR RELIEF**

WHEREFORE, the United States of America, the Louisiana Department of Environmental Quality, the State of Maryland, and the State of Nevada respectfully request that the Court grant the following relief:

A. Order ABF to comply with the terms of the CWA and the conditions of any applicable General Permits for Discharge of stormwater associated with transportation facilities classified as Standard Industrial Classification 4213 issued pursuant to CWA Section 402(p), 33 U.S.C. § 1342(p); La. R.S. 30:2025.B and C; Md. Code Ann., Envir. § 9-339; and N.R.S. 445A.695 at the ABF Facilities;

B. Order ABF to pay civil penalties to the United States, pursuant to CWA Section 309(d), 33 U.S.C. § 1319(d), for each day of violation of the CWA;

C. Order ABF to pay civil penalties to Louisiana, pursuant to La. R.S. 30:2025.E for each day of each violation at ABF's Terminal 82 in Jefferson, Louisiana;

D. Order ABF to pay civil penalties to Maryland, pursuant to Md. Code Ann., Envir. § 9-342, for each day of each violation at ABF's Terminal 048 in Elkridge, Maryland;

E. Order ABF to pay civil penalties to Nevada, pursuant to N.R.S. 445A.700 for each day of each violation at ABF's Terminal 140 in Las Vegas, Nevada;

F. Order the Defendant to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Water Act alleged above; and

G. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

**FOR THE UNITED STATES OF AMERICA:**

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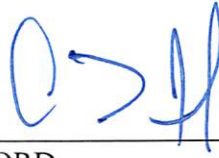
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