

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Patriot Shield Pennsylvania LLC	:	Violations of 25 Pa. Code §§ 123.31,
2530 Thomas Avenue	:	121.7, 127.11, 127.443
Jeannette, PA 15644	:	

CONSENT ORDER AND AGREEMENT

24th

This Consent Order and Agreement is entered into this ~~17th~~ day of December 2019, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and Patriot Shield Pennsylvania LLC (“Patriot”).

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Air Pollution Control Act of January 8, 1960, P.L. 2119 (1959), *as amended*, 35 P.S. §§ 4001-4015 (“Air Pollution Control Act”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”); and the rules and regulations (“rules and regulations”) promulgated thereunder.

B. Patriot Shield Pennsylvania LLC (“Patriot”) is a Pennsylvania limited liability company that maintains a business address of 2530 Thomas Avenue, Jeannette, PA 15644. Patriot is a “person” as that term is defined in Section 3 of the Air Pollution Control Act, 35 P.S. § 4003.

C. Patriot owns and has operated a hemp drying, processing, and storage facility located at 2530 Thomas Avenue in the City of Jeannette, Westmoreland County ("Site").

D. Patriot asserts that it conducted hemp drying operations at the Site from September 11, 2019 until November 5, 2019. Drying operations are seasonal and are not anticipated to resume at the Site until September 2020.

E. After November 5, 2019, Patriot conducted hemp processing and storage operations at the Site. Processing includes, among other things, trimming and packaging activities. Patriot asserts that all product accepted into the facility after November 5, 2019 until the next drying season has been dried elsewhere prior to its arrival at the Site.

F. On November 27, 2019, the Department issued to Patriot an Administrative Order requiring, among other things, cessation of emissions of air contaminants from hemp drying, processing, and/or storage from the Site to address Patriot's violations of 25 Pa. Code §§ 123.31, 121.7, 127.11, and 127.443 ("November Order").

Malodor Violations

G. Pursuant to 25 Pa. Code § 121.1, a "malodor" is defined as "An odor which causes annoyance or discomfort to the public and which the Department determines to be objectionable to the public."

H. 25 Pa. Code § 123.31 states in relevant part, "A person may not permit the emission into the outdoor atmosphere of any malodorous air contaminants from any source, in such a manner that the malodors are detectable outside the property of the person on whose land the source is being operated."

I. 25 Pa. Code § 121.7 states, "No person may permit air pollution as that term is defined in the act."

J. Pursuant to Section 3 of the Air Pollution Control Act, 35 P.S. § 4003, "air pollution" is defined as "the presence in the outdoor atmosphere of any form of contaminant, including, but not limited to, the discharging from stacks, chimneys, openings, buildings, structures, ... processes, or any other source of any smoke... gases, vapors, odors... or any other matter in such place, manner or concentration inimical or which may be inimical to the public health, safety or welfare or which is or may be injurious to human, plant or animal life or to property or which unreasonably interferes with the comfortable enjoyment of life or property."

K. Since September 2019, the Department has received numerous complaints from persons in the community reporting that objectionable odors are emanating from the Site and are causing annoyance and/or discomfort.

L. Since September 2019, the Department received a complaint that reported the destruction of property, specifically manufactured products, at a business located near the Site caused by the objectionable odors and air contaminants emanating from the Site.

M. On September 18, 2019, the Department confirmed that a malodor as defined in 25 Pa. Code § 121.1 was emanating from the Site. The odor was causing annoyance or discomfort to the public.

N. Patriot violated 25 Pa. Code § 123.31 on September 18, 2019 by permitting the emission of malodorous air contaminants from the Site that were detectable beyond the property where the Site is located.

O. Patriot violated 25 Pa. Code § 121.7 on September 18, 2019 by permitting air pollution as defined in the Air Pollution Control Act, because the malodor unreasonably interfered with the comfortable enjoyment of life in the community.

P. A Notice of Violation identifying the violation set forth in Paragraph K, above, was sent to Patriot on October 7, 2019.

Q. On October 29, 2019, the Department confirmed that a malodor as defined in 25 Pa. Code § 121.1 was emanating from the Site. The malodor was causing annoyance or discomfort to the public.

R. On October 30, 2019, the Department confirmed that a malodor as defined in 25 Pa. Code § 121.1 was emanating from the Site. The malodor was causing annoyance or discomfort to the public.

S. Patriot violated 25 Pa. Code § 123.31 on October 29 and 30, 2019 by permitting the emission of malodorous air contaminants from the Site that were detectable beyond the property where the Site is located.

T. Patriot violated 25 Pa. Code § 121.7 on October 29 and 30, 2019 by permitting air pollution as defined in the Air Pollution Control Act, because the malodor unreasonably interfered with the comfortable enjoyment of life in the community.

U. A Notice of Violation identifying the violations set forth in Paragraphs P and Q, above, was sent to Patriot on November 1, 2019.

Diesel Generator Installation and Operation

V. 25 Pa. Code § 127.11 states in relevant part, "a person may not cause or permit the construction or modification of an air contamination source, ... or the installation of an air

cleaning device on an air contamination source, unless the construction, modification, reactivation or installation has been approved by the Department.”

W. 25 Pa. Code § 127.443 states in relevant part, “A person may not cause or permit the operation of a source the construction, modification or reactivation of which, or the installation of an air cleaning device on which, is subject to § 127.11 (relating to plan approval requirements), unless the Department has issued a permit to operate the source.”

X. On September 18, 2019, a Department inspection of the Site revealed that Patriot had installed and was operating a diesel-fired generator engine (“Generator”) at the Site. The Generator powered an air circulation system to force air through the hemp drying rooms. The Generator was installed and operated at the Site from September 14, 2019 until November 5, 2019. The Generator was removed from the Site on November 11, 2019.

Y. The Generator is an “air contamination source” as defined in 25 Pa. Code § 121.1.

Z. Patriot did not apply for a plan approval authorization or request an exemption from plan approval requirements prior to installation and operation of the Generator.

AA. Based upon information submitted by Patriot following issuance of the November Order, the Department has determined that Patriot’s use of the Generator at the Site from September 14, 2019 until November 5, 2019 qualifies for exemption from plan approval and operating permit requirements.

Scrubber Installation and Operation

AB. An October 4, 2019 Department inspection of the Site revealed that a 3-part scrubber (“Scrubber”) had been installed and was operating at the Site. The Scrubber was

installed and operated at the Site from on or about October 3, 2019 until on or about November 5, 2019.

AC. The Scrubber is an "air cleaning device" as defined in 25 Pa. Code § 121.1.

AD. Patriot did not apply for a plan approval authorization or request an exemption from plan approval requirements prior to installation and operation of the Scrubber.

AE. The violations identified in Paragraphs S and T, above, occurred while the Scrubber was operating at the Site.

AF. Patriot violated 25 Pa. Code § 127.11 by failing to obtain authorization to construct or install the Scrubber.

AG. Patriot violated 25 Pa. Code § 127.443 by failing to obtain authorization to operate the Scrubber.

AH. Each day that Patriot operated the Scrubber is a separate violation of 25 Pa. Code § 127.443.

AL. On December 6, 2019, Patriot submitted to the Department a Request for Determination of Minor Significance for processing and storage operations at the Site ("RFD") pursuant to 25 Pa. Code § 127.14. A Department review of the RFD concluded that the specific processing and storage operations at the Site as specified in the RFD are exempt from plan approval and operating permit requirements.

AJ. The violations described in Paragraphs N, O, S, T, AF, and AG, above, each constitute unlawful conduct under Section 8 of the Air Pollution Control Act, 35 P.S. § 4008, and a public nuisance under Section 13 of the Air Pollution Control Act, 35 P.S. § 4013; and subject

Patriot to civil penalty liability under Section 9.1 of the Air Pollution Control Act, 35 P.S. § 4009.1.

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Patriot as follows:

1. Authority. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 4(9)(i) and 10.1 of the Air Pollution Control Act, 35 P.S. §§ 4004(9)(i) and 4010.1, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings.

a. Patriot agrees that the findings in Paragraph A through AJ are true and correct and, in any matter or proceeding involving Patriot and the Department, Patriot shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. Corrective Action.

a. No objectionable odors, as determined by the Department, emanating from the Site shall be detectable beyond the Site's property line.

b. Once per shift Patriot shall conduct a Site survey around the perimeter of the Site property for potentially objectionable odors that may be detectable or observed outside of Site

property ("Perimeter Surveys"). A site map showing the Perimeter Survey route is attached to this Consent Order and Agreement as Attachment 1.

c. Patriot shall maintain written records of the absence or presence of any potentially objectionable odors during each Perimeter Survey identified in Paragraph 3.b., above. These records shall be maintained at the Site and shall be made available to the Department upon request.

d. If any potentially objectionable odors are detected or observed during a Perimeter Survey, Patriot shall immediately identify the source of the odor and take corrective actions to assure that the odor is no longer detectable or observed outside of Site property. The records identified in Paragraph 3.c., above, shall include a description of any corrective actions taken.

e. If any potentially objectionable odors are detected or observed during a Perimeter Survey, Patriot shall within 24 hours notify the Department of the presence of the odor and any corrective action(s) taken.

f. Patriot shall maintain records of any maintenance conducted on air cleaning devices in use at the Site, including, but not limited to changing or replacing air filters or air filter media. Maintenance records shall be maintained on-site and made available to the Department upon request.

g. Patriot shall not conduct any hemp drying operations at the Site unless and until such operations have been authorized in writing by the Department. Prior to approval of hemp drying, any product accepted for processing at the Site shall have been dried elsewhere prior to its arrival at the Site.

h. If Patriot wishes to conduct hemp drying operations during 2020 and beyond, no later than February 29, 2020, Patriot shall submit to the Department a Request for Determination of Minor Significance or plan approval application for such drying operations, which shall include but shall not be limited to, an odor control plan and all equipment intended to be installed and operated at the Site. The RFD shall also demonstrate that the odor control plan, and any equipment utilized will effectively control odors so that objectionable odors will not be detectable outside of the property where the Site is located.

i. Patriot shall operate the Site in accordance with the specifications contained in the RFD submitted on December 6, 2019 and as approved by the Department unless it is subsequently authorized or directed by the Department in writing to do otherwise.

j. Patriot shall provide full and complete responses within the time frame set by the Department to any request for further information related to operation of the Site, any RFD submitted pursuant to Paragraph 3.h, or any term of this Consent Order and Agreement.

k. Patriot shall undertake an engineering investigation into ventilation and activated carbon filtration systems that would constitute Best Available Technology (as defined in 25 Pa. Code § 127.1) for the control of odors that may be generated by the hemp processing and/or storage operations conducted at the Site ("Investigation"). The Investigation shall include, but is not limited to, a technical evaluation of the existing ventilation system and odor control equipment at the Site and a technical evaluation of activated carbon filtration systems that are available or may become available for the air flow rates of the ventilation system and the characteristics odors emanating from hemp processing and/or storage operations. Within ninety (90) calendar days of execution of this Consent Order and Agreement, Patriot shall submit to the

Department a report containing findings of the Investigation and any proposed changes to the building's ventilation system, odor control equipment, or other equipment and/or process changes resulting from the findings of the investigation to satisfy Best Available Technology. Patriot shall obtain any and all necessary approvals from the Department prior to implementing any proposed changes to the building's ventilation system, odor control equipment, or other equipment and/or process changes.

4. This Consent Order and Agreement replaces the Order dated November 27, 2019.

5. Civil Penalty Settlement.

a. In resolution for the Department's claim for civil penalties for the violations identified in Paragraphs N, O, S, T, AF, and AG, above, which the Department is authorized to pursue under Section 9.1 of the Air Pollution Control Act, 35 P.S. § 4009.1, the Department hereby assesses a civil penalty of Twenty-Nine Thousand Dollars (\$29,000.00), which Patriot hereby agrees to pay.

b. Patriot shall pay the civil penalty assessed in Paragraph 4.a., above, pursuant to the following schedule: Five Thousand Dollars (\$5,000.00) due within sixty (60) calendar days of execution of this Consent Order and Agreement; and five (5) additional monthly payments of Four Thousand Dollars (\$4,000.00) due on the last day of each month, beginning with the first monthly payment due on or before March 31, 2020 and ending with the final payment due on or before July 31, 2020.

c. If Patriot makes each payment timely, totaling Twenty-Five Thousand Dollars (\$25,000.00), as called for in Paragraph 4.b., above, the Department will accept these

payments as a full and complete satisfaction of Patriot's civil penalty liability for the violations identified in Paragraphs N, O, S, T, AF, and AG, above.

d. If any of the five (5) monthly payments is not received in full on or before the date set forth in Paragraph 5.b., above, the entire outstanding balance of the full Twenty-Nine Thousand Dollar (\$29,000.00) penalty assessed in Paragraph 5.a., above, shall be due, and said outstanding balance shall be paid in full within thirty (30) days of the date by which the missed monthly payment was due.

e. All civil penalty payments shall be made by corporate check or like made payable to "Commonwealth of Pennsylvania, Clean Air Fund" and sent to the Air Quality Program Manager, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

6. Stipulated Civil Penalties.

a. In the event Patriot fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, Patriot shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount determined under the following schedule:

(i) For any violation of Paragraph 3.a. or 3.g., \$8,000.00 for the first day of violation; \$10,000.00 for the second day of violation; \$15,000.00 for the third day of violation; \$25,000.00 per day for each additional day of violation.

(ii) For any violation of Paragraphs 3.b., 3.d., or 3.i., \$1,000.00 for the first day of violation; \$2,000.00 for the second day of violation; \$5,000.00 per day for each additional day of violation.

(iii) For any violation of Paragraphs 3.c., 3.e., 3.f., 3.h., 3.j., or 3.k., \$500.00 per day for the first 10 days of violation; \$1,000.00 per day for each additional day of violation.

b. Any payment under this paragraph shall neither waive Patriot's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Patriot's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Patriot's liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

c. Stipulated civil penalties shall be due automatically and without notice.

7. Additional Remedies.

a. In the event Patriot fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph and Paragraph 5 (Stipulated Civil Penalties) are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

8. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. Patriot reserves the right to challenge any action which the Department may take to require those measures.

9. Liability of Operator. Patriot shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Except as provided in Paragraph 9(c) Patriot also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

10. Transfer of Site.

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Site or any part thereof.

b. If Patriot intends to transfer any legal or equitable interest in the Site which is affected by this Consent Order and Agreement, Patriot shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Regional Office of the Department of such intent.

c. The Department in its sole discretion may agree to modify or terminate Patriot's duties and obligations under this Consent Order and Agreement upon transfer of the Site. Patriot waives any right that it may have to challenge the Department's decision in this regard.

11. Correspondence with Department. All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Air Quality Program Manager, Southwest Region
Department of Environmental Protection
400 Waterfront Drive

Pittsburgh, PA 15222-4745
412-442-5215; Facsimile 412-442-4194

12. Correspondence with Patriot. All correspondence with Patriot concerning this Consent Order and Agreement shall be addressed to:

Tyler Dickinson, Chief Operating Officer
Patriot Shield Pennsylvania LLC
2530 Thomas Avenue
Jeannette, PA 15644
720-281-1995, tyler@patriotshieldsecurity.com

Patriot shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

13. Force Majeure.

a. In the event that Patriot is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstance beyond Patriot's control and which Patriot, by the exercise of all reasonable diligence, is unable to prevent, then Patriot may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond Patriot's control. Patriot's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.

b. Patriot shall only be entitled to the benefits of this paragraph if it notifies the Department within five (5) working days by telephone and within ten (10) working days in

writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by Patriot to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten working days of its submission. Patriot's failure to comply with the requirements of this paragraph specifically and in a timely fashion shall render this paragraph null and of no effect as to the particular incident involved.

c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by Patriot and other information available to the Department. In any subsequent litigation, the Patriot shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

14. Severability. The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

15. Entire Agreement. This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

16. Attorney Fees. The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

17. Modifications. No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

18. Titles. A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph but shall not be treated as controlling.

19. Decisions Under Consent Order. Any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection which Patriot may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

20. Termination. The obligations in this Consent Order and Agreement shall terminate when the Department determines that all of the obligations contained herein have been complied with, all funds due to the Department have been paid, or all hemp drying, processing, and/or storage operations at the Site are permanently ceased.

21. Execution of Agreement. This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.


IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Patriot certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Patriot; that Patriot consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Patriot hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by Patriot's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR PATRIOT SHIELD
PENNSYLVANIA LLC:



Tyler Dickinson
Chief Operating Officer


FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



Mark R. Gorog, P.E.
Regional Manager Air Quality Program

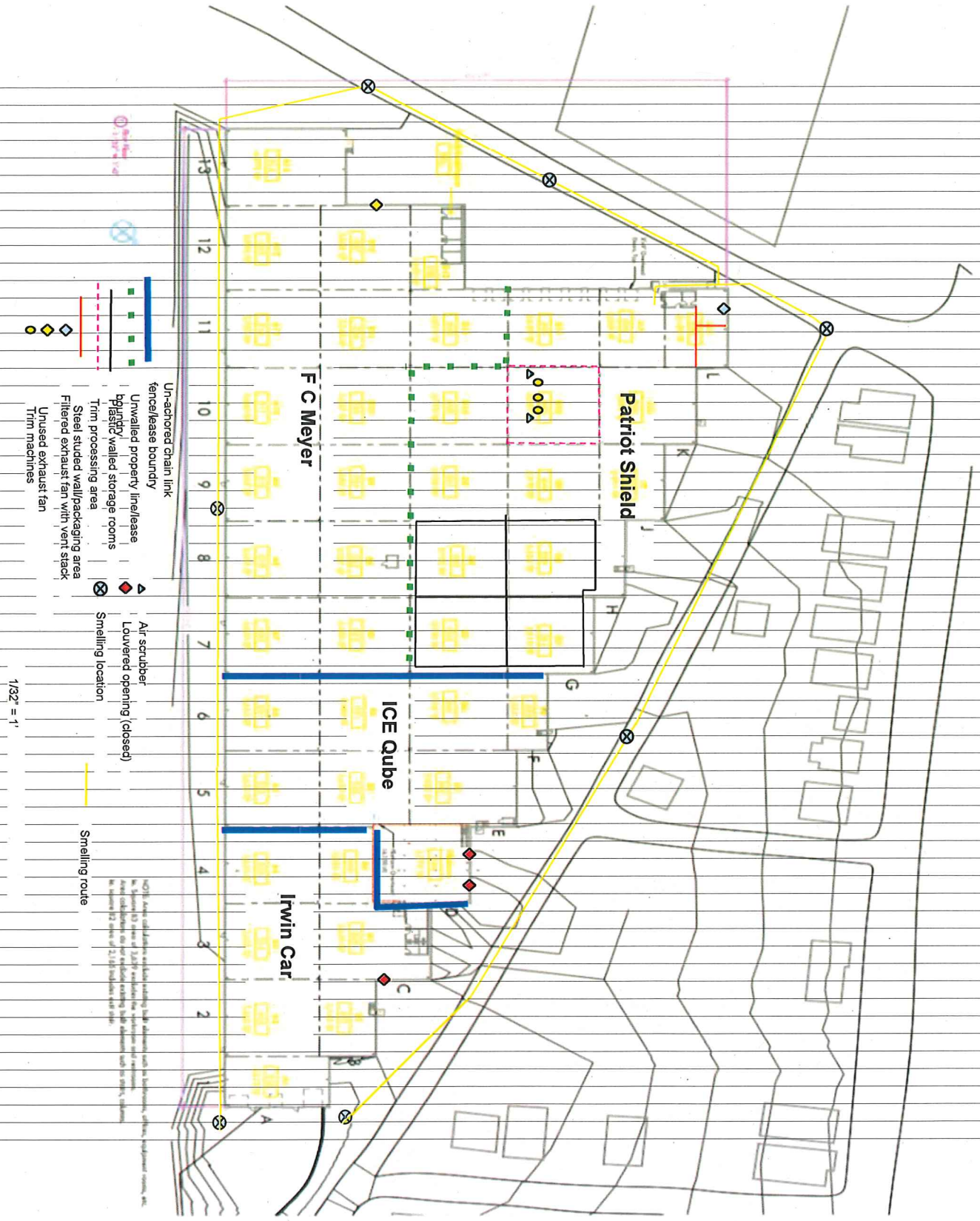
Waived

Name
Attorney for Patriot Shield Pennsylvania LLC



Michael J. Heilman
Assistant Regional Counsel
Forrest M. Smith

Attachment 1 to Patriot Shield Pennsylvania LLC Consent Order and Agreement



2530 Thomas Avenue Warehouse
2530 Thomas Ave, Jonestown, PA

Existing Conditions

Not for Construction

03

Existing Floor Plan

Scale: 1/32" = 1'

Drawing Number: 03

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