

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

Gary White and Donald White	:	Noncompliance Residual Waste Activity
2437 Union Canal Drive	:	ID No.: PF #749473
Lebanon, PA 17046	:	North Lebanon Township, Lebanon County

ORDER

The Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") has determined the following findings of fact:

- A. The Department is the agency with the duty and authority to administer and enforce the Solid Waste Management Act, the Act of July 7, 1980, P.L. 380, as amended, 35 P.S. §§6018.101 et seq. ("SWMA"); the Clean Streams Law, the Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. § 691.1 et seq.; 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 promulgated thereunder.
- B. Gary White and Donald White are brothers. Gary White has a mailing address of 2437 Union Canal Drive, Lebanon, Pennsylvania, 17046. Donald White has a mailing address of 4500 Lake Heather Circle, Saint James City, Florida, 33956. Donald White owns the property located at 2437 Union Canal Drive, Lebanon, Pennsylvania, 17046 ("the Property"). Gary White currently resides at the Property.
- C. West Lebanon Township has identified the Property in an ongoing investigation as a possible source of perchloroethylene ("PCE"), also referred to as tetrachloroethene, contamination of a municipal drinking water well. The municipal drinking water well is adjacent to the Property and is separated from the Property by a small alley on the Property's eastern border. The municipal drinking water well ("MW-2") is owned and operated by West Lebanon Township, Lebanon County.

- D. On November 14, 2011, West Lebanon Township discovered that MW-2 was contaminated with a concentration of PCE at 22.2 parts per billion ("ppb"), approximately five times above the Maximum Contamination Level ("MCL") pursuant to the National Primary Drinking Water Regulations contained in Section 141.61(a) of Title 40 of the Code of Federal Regulations ("CFR"), 40 CFR §141.61(a), which provides an MCL for PCE of 5 ppb. Analytical results from a previous sampling of MW-2 collected on August 24, 2011, showed no detectable concentrations of PCE.
- E. PCE is a dense non-aqueous phase liquid, which is used widely in the dry cleaning industry. PCE is also used as a solvent for organic materials, and when mixed with other chlorocarbons, it is used to degrease metal parts in the automotive and metalworking industries. PCE appears in a few consumer products such as paint strippers and spot removers. Due to its physical properties, when sufficient quantities are spilled in the environment, PCE will readily migrate through the soil column and enter the water table.
- F. In response to a complaint to the Department alleging that dumping activity had occurred on the Property, the Department, on December 20, and December 23, 2011, conducted inspections of the Property. During the inspections, the Department observed, as alleged in the complaint, oily stains and dead vegetation around the southern, western and northern sides of a single car garage that is situated on the southeast corner of the Property. The Department also observed numerous containers, including but not limited to 55-gallon drums and barrels, that were located along the northern side of the single car garage; along the edge of a wooded area located directly west of the garage; and in various other locations on the Property. The containers housed mostly scrap metal with some free liquid in the bottoms of those that did not have intact lids. One burn barrel was observed on the Property, southwest of the garage. A dump area further west and north of the Property, located partially on West Lebanon Township property and partially on North Lebanon Township property, was also observed during the inspections, which contained old furniture, household debris and metal items.
- G. As part of the ongoing investigation into the PCE contamination observed in MW-2, West Lebanon Township obtained a search warrant to enter the Property and collected soil samples from around the single car garage, in the area of the burn barrel, and in the area

where containers were staged at the edge of a wooded area directly west of the garage. Five soil samples were collected from around the garage. Analytical results showed that PCE was detected in three of the five samples. The soil samples in which PCE was detected were collected from the northwest, southwest and southeast corners of the garage, correlating to those areas where oily stains were observed during the Department's December 20 and 23 inspections, and showed PCE concentrations of 28.7 parts per million ("ppm"), 16.6 ppm, and 26.7 ppm, respectively.

- H. The Department conducted another inspection of the property on January 9, 2012. Gary White was present during said inspection. Gary White stated that on one occasion he applied approximately one quart of used motor oil, which he obtained from changing the oil in his personal vehicle, to soil the on the side and back of the garage in order to kill vines. The Department informed Gary White that West Lebanon Township had collected and analyzed soil samples from around the garage, and concentrations of PCE were found in three out of the five samples collected. The Department also informed Gary White that MW-2, located approximately 60 feet from the garage, had recently been contaminated with PCE. The Department requested that Gary White 1) retain an environmental consultant; 2) excavate the contaminated soil; and 3) once the excavation was completed, collect post excavation samples from the excavated areas around the garage to confirm that the remaining soils were free of contamination. The Department gave a list of consultants to Gary White. He stated that he would contact a consultant to discuss the Department's request.
- I. On January 17, 2012, Michael Maiolie of the Department's Waste Management Program spoke with Gary White by phone. Gary White stated that on January 16, 2012, he removed soil from the south side of his garage and from around the downspout at the southwest corner of the garage, and he placed the soil into a 55-gallon drum. He placed the drum of soil inside the garage. Gary White stated that he had not arranged to have any soil analysis conducted around the garage. Mr. Maiolie stressed to Gary White that soil analysis was necessary to confirm that all contamination had been removed, since MW-2, also contaminated with PCE, is located in close proximity to the garage. Gary White asked for a few additional days to speak with a consultant regarding the soil sampling. Mr. Maiolie

stressed that representatives of the Department must be present at the time the soil samples are collected.

- J. On January 27, 2012, the Department issued a Notice of Violation (“NOV”) to Gary White, for violating the Section 287.101(a) of the Pennsylvania Residual Waste Management Regulations (“Residual Waste Regulations”), 25 Pa Code §287.101(a), and Section 6018.610(1) of the SWMA, 35 P.S. 6018.610(1). The NOV requested that Gary White provide to the Department, within seven days, the name of a third party consultant that will perform soil sampling and analysis at the Property, and the date and time that said sampling will occur so that Department personnel may be present to observe the sample collection.
- K. To date, the Department has not received a response from Gary White to the January 27, 2012 NOV.
- L. Hazardous substances and/or contaminants, as those terms are defined by Section 103 of the Hazardous Sites Cleanup Act, 35 P.S. §6020.103, have been released, or are threatened to be released, at the Property.
- M. Section 610(1) of the SWMA, 35 P.S. §6018.610(1), states that “[i]t shall be unlawful for any person or municipality to:
 - (1) Dump or deposit, or permit the dumping or depositing, of any solid waste onto the surface of the ground or underground . . . by any means, unless a permit for the dumping of such solid wastes has been obtained from the department . . .”
- N. The Residual Waste Regulations, 25 Pa Code §287.101(a), require, “[e]xcept as provided in subsection (b), a person or municipality may not own or operate a residual waste disposal or processing facility unless the person or municipality has first obtained a permit for the activity from the Department under this article.”

- O. The violations described above in paragraphs F, G, and H constitute unlawful conduct under Section 610(1) of the SWMA, 35 P.S. §6018.610(1), and a public nuisance under Section 601 of the SWMA, 35 P.S. §6018.601.

NOW, THEREFORE, this 8th day of February, 2012, the Department, pursuant to Sections 104 and 602 of the SWMA, 35 P.S. §§6018.104 and 6018.602, Section 610 of the Clean Streams Law, 35 P.S. §691.610, and Section 1917-A of the Administrative Code, 71 P.S. §510-17, hereby ORDERS that:

1. Within ten (10) days of the date of this Order, Gary and Donald White shall provide the Department with the following:
 - a. A list describing the origins and contents of all containers, 55-gallon drums and barrels that have been brought to the Property. The list shall include the name, address and phone number of the person, business or location where each container, drum and barrel was obtained.
 - b. A map of the Property depicting 1) the temporary and final disposition of each container, drum and barrel, identified in accordance with paragraph 1.a above; 2) any residual contents of said container, drum and barrel identified in accordance with paragraph 1.a above; and 3) the location(s) of any fluids that have been dumped onto the ground.
 - c. A list of any known spills or releases that have occurred on the Property, including the date the spill or release occurred, the location where the spill or release occurred, and the substance that was spilled or released.

2. Within fourteen (14) days of the date of this Order, Gary and Donald White shall retain a contractor qualified to perform a site characterization of the Property, excavate all contaminated soils on the Property, and properly dispose of all contaminated soils. Gary and Donald White shall notify the Department in writing of the contractor hired to perform said duties and submit a schedule to the Department, for its review and approval, for the characterization, removal and disposal of contaminated soils on the Property. Notification shall be sent to Michael Maiolie, Waste Management Program, Pennsylvania Department of Environmental Protection, Reading District Office, 1005 Crossroads Boulevard,

Reading, PA 19605. Gary and Donald White shall ensure that the Department is contacted and available to observe the collection of all samples and excavation of contaminated soils.

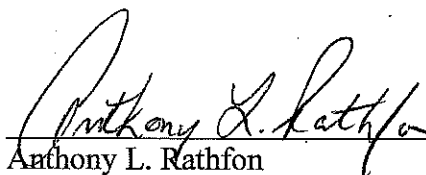
3. Within forty-five (45) days of the date of this Order, Gary and Donald White shall have the characterization, excavation and disposal of all contaminated soils completed by the Department-approved contractor. All disposal receipts and analytical results must be retained and copies submitted to the Department in accordance with paragraph 4 below.
4. Within sixty (60) days of the date of this Order, Gary and Donald White shall submit to the Department written documentation that all contaminated soil identified during the site characterization has been properly removed and disposed. The documentation shall include copies of all disposal receipts, analytical results documenting waste characterization, and analytical results from the pre- and post- excavation soil characterization, to establish that all contaminated soil has been removed. All analytical testing must be performed by a laboratory accredited pursuant to the Department's Environmental Laboratory Accreditation Regulations, 25 Pa Code, Chapter 252. All disposal receipts and analytical results must be retained and copies sent to:

Ali Tarquino Morris
Pennsylvania Department of Environmental Protection
Southcentral Regional Office
Waste Management Program, 3rd Floor
909 Elmerton Avenue
Harrisburg, PA 17110-8200

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's Rules of Practice and Procedure, may be obtained from the Board. The appeal form and the Board's Rules of Practice and Procedure are also available in Braille or on audio tape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD. IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD AT 717-787-3483, FOR MORE INFORMATION.

FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION:



Anthony L. Rathfon
Waste Management Program Manager
Southcentral Region