COMMONWEALTH of VIRGINIA

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ISR ENVIRONMENTAL SERVICES, LLC EPA ID No. VACESQG21112 and VACESQG21114

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and ISR Environmental Services, LLC, regarding the ISR sites in Fincastle and Troutville, Virginia, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.

2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.

3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

4. "CESQG" means a conditionally exempt small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month and meeting the other restrictions of 40 CFR § 261.5 and 9 VAC 20-80-120(A).

5. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

8. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.

9. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

10. "ISR" means the ISR Environmental Services, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. ISR is a "person" within the meaning of Va. Code § 10.1-1400.

11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

12. "Order" means this document, also known as a "Consent Order" or "Order by Consent".

13. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

14. "Storage" means the holding of solid or hazardous waste for a temporary period, at the end of which the waste is treated, disposed of, or stored elsewhere, as defined by 40 CFR § 260.10 and 9 VAC 20-81-10, as applicable.

15. "Used oil", as defined at 40 CFR § 279.1, means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

16. "Va. Code" means the Code of Virginia (1950), as amended.

17. "VAC" means the Virginia Administrative Code.

18. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

19. "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effective date as stated in 9 VAC 20-60-18,

and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.

20. "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. ISR is an industrial cleaning contractor providing vacuum truck services, debris clean-up, and spill response. Mr. Robert Simmons is the President of ISR. ISR has facilities located at 2417 Blacksburg Road in Fincastle ("Fincastle site") and 4050 Lee Highway in Troutville ("Troutville site"). Operations at this site are subject to the Virginia Waste Management Act, the VSWMR and the VHWMR.

2. ISR is a CESQG of hazardous waste at the Fincastle site and the Troutville site. Waste streams for these facilities include: used oil (Fincastle and Troutville sites) and oil filters (Fincastle site). The EPA hazardous waste generator identification number for the Fincastle site is VACESQG21112. The EPA hazardous waste generator identification number for the Troutville site is VACESQG21114.

3. On July 28, 2011, Department staff inspected the Fincastle site for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

    a. A used oil tank is not labeled with the words "used oil".

    b. ISR burns used oil from off-site sources that are not household do-it-yourself generators.

    c. ISR has not made a determination of whether used oil burned for energy recovery is "on-specification"

    d. ISR has not kept records of used oil analysis required under 40 CFR § 279.72(a).

    e. ISR recovers used oil from wastewater generated off-site with an oil/water separator; has not notified as a used oil processor; does not have a contingency plan; has not determined total halogen content of used oil; does not have secondary containment; does not have an analysis plan; does not keep a record of each used oil shipment.

f. ISR temporarily stored solid waste (including waste tires and debris from roadside cleanups) that was generated off-site.

4. On September 8, 2011, Department staff performed an inspection at the Troutville site. Based on the inspection and follow-up information, Department staff made the following observations:

   a. ISR transports industrial wastewater containing oil. ISR has not notified as a used oil transporter and has not obtained a used oil transporter EPA ID number.

   b. ISR recovers used oil from wastewater generated off-site with an oil/water separator; ISR has not notified as a used oil processor; does not have a contingency plan; has not determined total halogen content of used oil; does not have secondary containment; does not have an analysis plan; does not keep a record of each used oil shipment.

   c. ISR has not made a determination of whether oil generated during operation of the oil/water separator and subsequently burned for energy recovery is on-specification.

5. 40 CFR § 261.5(g)(3) states that a CESQG must dispose of or ensure delivery of its waste at an authorized treatment, storage or disposal facility.

6. 40 CFR § 279.22(c)(1) states that containers and above-ground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil".

7. 40 CFR § 279.23 states that generators may burn used oil in used oil-fired space heaters provided that: (a) the heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourself used oil generators.

8. 40 CFR § 279.42(a) states that used oil transporters who have not previously complied with the notification requirements of RCRA Section 3010 must comply with these requirements and obtain an EPA identification number.

9. 40 CFR § 279.51 states that used oil processors and re-refiners who have not previously complied with the notification requirements of RCRA Section 2010 must comply with these requirements and obtain an EPA identification number.

10. 40 CFR § 279.53 states that the owner or operator of a used oil processing/re-refining facility must determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

11. 40 CFR § 279.54 states that containers used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

12. 40 CFR § 279.55 states that owners or operators of used oil processing and re-refining facilities must develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of § 279.53.

13. 40 CFR § 279.56(a) states that used oil processors/re-refiners must keep a record of each used oil shipment accepted for processing/re-refining.

14. 40 CFR § 279.72(a) states that a generator, transporter, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of § 279.11 by performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications.

15. 40 CFR § 279.72(b) states that a generator, transporter, processor/re-refiner, or burner who claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under § 279.11, must keep copies of analyses of the used oil for three years.

16. Va. Code § 10.1-1408.1 states that no person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director.

17. 9 VAC 20-81-40 states that: (A) No person shall operate any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste without a permit from the director. (B) No person shall allow waste to be disposed of or otherwise managed on his property except in accordance with this chapter. (C) It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner. (D) Any person who violates subsection A, B, or C of this section shall immediately cease the activity of improper management and the treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, or closure in place.

18. On October 12, 2011, based on the July 28, 2011 and September 8, 2011 inspections and follow-up information, the Department issued Notice of Violation No. 11-10-BRRO-R-002 to ISR for violations including those described in paragraphs C(3) and C(4), above.

19. Representatives of DEQ and ISR met on November 15, 2011 to discuss the NOV. During the meeting, Mr. Simmons stated that ISR had ceased operating the oil/water separator and had ceased staging solid waste at ISR sites.

20. Representatives of DEQ and ISR met again on February 22, 2012. During the meeting, Mr. Simmons provided information indicating that all remaining violations had been corrected.

21. Based on the violations described in Paragraphs C(3) and C(4) above, the Board concludes that ISR has violated VHWMR, the VSWMR and the Virginia Waste Management Act, as noted above. More specifically, as noted above, the Board

concludes that ISR has violated 40 CFR § 261.5(g)(3), 40 CFR § 279.22(c)(1), 40 CFR § 279.23, 40 CFR § 279.42(a), 40 CFR § 279.51, 40 CFR § 279.53, 40 CFR § 279.54, 40 CFR § 279.55, 40 CFR § 279.56(a), 40 CFR § 279.72(a), 40 CFR § 279.72(b), Va. Code § 10.1-1408.1, and 9 VAC 20-81-40 as described in Paragraphs C(3) and C(4), above.

22. ISR has submitted documentation that verifies that the violations described in paragraphs C(3) and C(4), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders ISR, and ISR agrees to pay a civil charge of $2,730.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

ISR shall include its Federal Employer Identification Number (FEIN) (_____) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of ISR for good cause shown by ISR, or on its own motion pursuant to the Administrative Process Act after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, ISR admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. ISR consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. ISR declares that it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by ISR to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. ISR shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. ISR shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ISR shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of any such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which ISR intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and ISR. Nevertheless, ISR agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after ISR has completed all of the requirements of the Order;

    b. ISR petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to ISR.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve ISR from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by ISR and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of ISR certifies that he or she is a responsible officer authorized to enter into the terms and conditions of this Order and to execute and legally bind ISR to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of ISR.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, ISR voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2012.

_____
Robert J. Weld, Regional Director
Department of Environmental Quality

ISR Environmental Services, LLC voluntarily agrees to the issuance of this Order.

Date: 5-17-12 By: _____
Mr. Robert Simmons
President, ISR

Commonwealth of Virginia
City/County of Botetourt

The foregoing document was signed and acknowledged before me this 17th day of May, 2012, by Mr. Robert Simmons.

_____
Notary Public

34782 8
Registration No.

My commission expires: Sept 30, 2013
Notary seal:

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