

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO **AERC.com, Inc.** EPA ID No. VAR000502591

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Waste Management Board and AERC.com, Inc. for the purpose of resolving certain alleged violations of the Virginia Waste Management Act and the Virginia Hazardous Waste Management Regulations.

SECTION B: Definitions

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

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "AERC" or "Company" means AERC.com, Inc., a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
3. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Destination Facility" means a universal waste destination facility, as defined by 40 CFR §273.9.
6. "Director" means the Director of the Department of Environmental Quality.

7. "Facility" means the AERC facility located at 116 Silvia Road, Ashland, Virginia.
8. "Generator" means a hazardous waste generator, as defined by 40 CFR § 260.10.
9. "Handler" means a Universal Waste Handler, as defined by 40 CFR § 273.9.
10. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions (See 40 CFR § 262.34(a)-(b) and (g)-(l)).
11. "Large Quantity Handler" means a Large Quantity Handler of Universal Waste as defined by 40 CFR § 273.9. A Large Quantity Handler is a universal waste handler that accumulates 5,000 kilograms or more total of universal waste at any time.
12. "Order" means this document, also known as a Consent Order.
13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
14. "Universal Waste" means any hazardous waste that can be managed under the universal waste requirements of 40 CFR Part 273 as an alternative to full hazardous waste management standards under 40 CFR Parts 260 through 272. Universal wastes include specified types of widely generated hazardous wastes (including waste lamps) that are subject to less stringent standards for storing, transporting, and collecting these wastes. The standards are designed to encourage the environmentally sound collection and proper management of these hazardous wastes. (See 64 *Federal Register* at 36468 (July 6, 1999)).
15. "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) (as in effect July 1, 2006), with additions and exceptions as noted. The VHWMR also contain independent requirements. In this Order, when reference is made to a part or section of the CFR, unless otherwise noted, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR (e.g., 40 CFR Part 273 means that part of the CFR as incorporated by 9 VAC 20-60-273, and 40 CFR 262.34 means that section as incorporated by 9 VAC 20-60-262, etc.). Citations to independent Virginia requirements are made directly to the VHWMR (e.g., 9 VAC 20-60-315 D).

SECTION C: Findings of Fact and Conclusions of Law

1. AERC submitted an initial RCRA Subtitle C Site Identification Form (received November 5, 2001) for the Facility that gave notice of regulated waste activity as a transporter of hazardous waste. AERC was issued EPA ID No. VAR000502591 for the Facility. AERC submitted an updated form (received October 15, 2004) that gave

notice as transporter of hazardous waste, a recycler of hazardous waste, a Large Quantity Handler of Universal Waste, and a Destination Facility for Universal Waste.

2. AERC collects universal waste (waste fluorescent lamps) at its Facility in Ashland, Virginia. The fluorescent lamps are crushed at the Facility in a purpose-manufactured lamp crushing machine and separated into glass, metal end caps, and phosphor dust, which then are shipped off-site.
3. Va. Code § 10.1-1400 defines "Person" as an "individual, corporation, partnership, association ... or any other legal entity." (*Accord* 40 CFR §260.10) "Operator" is defined by 40 CFR § 260.10 as the "person responsible for the overall operation of a facility". Accordingly, AERC is the Operator of the Facility.
4. DEQ staff inspected the Facility, interviewed employees, and reviewed Facility records on March 19, 2008.
5. During the March 2008 inspection, DEQ staff found that the Facility was operating as an LQG and transporter of hazardous waste. LQGs and transporters of hazardous waste are subject to the requirements of 40 CFR §§ 262 and 263, respectively. DEQ staff also confirmed that the Facility received, stored, and processed universal waste and was thereby operating as a Destination Facility. According to 40 CFR § 273.60, Destination Facilities that store universal waste prior to recycling are subject to all applicable requirements of 40 CFR Parts 264, 265, 266, 270, and 124.
6. Records indicated that on two occasions in 2007, the Facility received crushed bulbs designated as hazardous waste by generators in Pennsylvania and South Carolina, (and which could be designated as universal waste if originating in Virginia), which it processed as universal waste. According to 9 VAC 20-80-120.A.1, wastes declared hazardous wastes by the generator must be managed in accordance with the VHWMR.
7. AERC stored universal waste lamps for more than 24 hours prior to processing. Universal waste is a form of hazardous waste, according to 40 CFR § 260.10. AERC was therefore operating as a hazardous waste storage facility, and was required by 40 CFR § 270.1(c) to obtain a permit from the Director of DEQ in order to store hazardous waste. The Director has not issued a permit authorizing the Facility to store hazardous waste.
8. During the March 2008 inspection, DEQ staff observed one 55-gallon drum labeled "hazardous waste" and dated March 17, 2007 stored in the processing area. This drum was received at the Facility on May 18, 2007. A permit for storage of hazardous waste is required by 40 CFR §270.1(c). The Director has not issued a permit authorizing the Facility to store hazardous waste.
9. The Facility received un-manifested dental amalgam on one occasion in 2006, which it shipped out as hazardous waste. Destination Facilities are required by 40 CFR §

273.61 to notify DEQ of any shipment containing hazardous waste that is not a universal waste; however, AERC failed to do so.

10. Interviews with Facility employees seemed to indicate that the hazardous waste accumulation area was physically checked each day the equipment was operated, but not necessarily when equipment was shut down. The checks were not documented. Weekly inspections of the hazardous waste accumulation area are required by 40 CFR § 264.174 and 262.34 (a)(1) and 265.174.
11. AERC contends that its personnel, notably the facility manager or his designee, complete daily, documented walk-throughs of the facility. These walk-throughs are completed pursuant to the Facility Health and Safety Procedure SHP-007-V, "Daily Air Monitoring Policy." The walk-through covers all areas of the facility, and as such, would provide for a review of the hazardous waste accumulation area in addition to other portions of the plant. AERC contends that its inspections procedures were at least sufficient to satisfy the requirements of 40 CFR 262.34(a)(1) and 40 CFR 265.174.
12. The Facility did not submit the exception reports required by 40 CFR 262.42(a)(2) to DEQ when signed copies of two 2006 manifests were not received within 45 days of acceptance of the waste by the initial transporter.
13. The Facility's contingency plan did not describe arrangements agreed to by local authorities and the newest revision was not sent to local authorities, as required by 40 CFR §§ 264.52 and 264.53, respectively. The Facility had not formally attempted to familiarize all applicable local authorities with Facility operations as required by 40 CFR § 264.37, although fire department officials had visited the Facility.
14. Facility records indicated that the following waste streams generated by the Facility were not characterized, as required by 40 CFR § 262.11: (1) dust-covered cardboard from shipping containers, (2) dust-covered plastic from the shatter-shield lamps, (3) dust released from the process and collected on surfaces, and (4) broken lamps. In March 2008, these wastes were sampled and analyzed using the Toxicity Characteristic and Leaching Procedure ("TCLP"). The cardboard, plastic, and broken lamps had mercury concentrations below 0.2 mg/L, and were therefore not D009 hazardous waste.
15. The TCLP mercury concentration of the dust sample was 4.12 mg/L. Wastes with mercury concentrations over 0.2 mg/L meet the toxicity characteristic and are hazardous waste. Therefore, according to 40 CFR §261.20(a) and §261.24(a), the dust sampled in March 2008 was a hazardous waste (D009).
16. DEQ staff observed dust, potentially including D009 hazardous waste, present on surfaces throughout the Facility. The operation area was not air conditioned and the equipment was operated occasionally with the doors open to the outside environment. AERC did not at all times maintain and operate its Facility to minimize the possibility

of any unplanned sudden or non-sudden release of hazardous waste constituents as required by 40 CFR § 264.31.

17. On March 19, 2008, air monitoring was conducted outside of the Facility. No quantifiable mercury contamination was found.
18. On March 27, 2008, AERC voluntarily ceased lamp crushing operations. On April 8, 2008, AERC submitted documentation of changes in its shipping/receiving process, waste determinations, and recordkeeping procedures, which resolve several of the alleged violations.
19. On May 6, 2008, DEQ issued Notice of Violation No. 2008-05-PRO-601 for the alleged violations described in paragraphs 5 through 14, above.
20. On May 28, 2008, DEQ staff met with representatives of AERC to discuss the NOV. Discussions centered on how AERC could come into compliance with regulatory requirements. AERC agreed to complete RCRA closure of the unpermitted storage facility. On July 14, 2008, AERC submitted a draft closure plan for the facility and additional waste characterization data. DEQ provided comments on the draft closure plan on August 7, 2008. AERC submitted an updated contingency plan and documentation of communication with local officials on August 15, 2008 to resolve the remaining violations.
21. AERC is currently operating the Facility as a Large Quantity Handler of universal waste and an LQG of hazardous waste.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455(F), orders AERC, and AERC agrees to perform the actions described in Appendices A, B and C of this Order. In addition, AERC voluntarily agrees to pay a civil charge of \$38,000 in settlement of the violations alleged in this Order, to be paid as follows:

1. Within 30 days of the effective date of this Order, AERC shall pay \$13,000 of the assessed civil charge.

Payment shall be made by check payable to the "Treasurer of Virginia" and shall be delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23219

Either on a transmittal letter or as a notation on the check, AERC shall include its Federal Identification Number.

2. AERC shall satisfy \$25,000 of the civil charge by satisfactorily completing the Supplemental Environmental Project (“SEP”) described in Appendix C of this Order.
3. The net project cost of the SEP to AERC shall not be less than the amount set forth in Paragraph D.2. If it is, AERC shall pay the remaining amount in accordance with Paragraph D.1 of this Order, unless otherwise agreed to by the Department. “Net Project Costs” means the net present after tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g. tax credits for pollution control or recycling equipment) grants, or first-year operation cost reductions or other efficiencies, the Net Project Costs shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
4. By signing this Order, AERC certifies that it has not commenced performance of the SEP.
5. AERC acknowledges that it is solely responsible for completing the SEP. Any transfer of funds, tasks, or otherwise by AERC to a third party, shall not relieve AERC of its responsibility to complete the SEP as described in this Order.
6. In the event it publicizes the SEP or the SEP results, AERC shall state in a prominent manner that the project is part of a settlement of an enforcement action.
7. The Department has the sole discretion to:
 - a. authorize any alternate, equivalent SEP proposed by AERC;
 - b. determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
8. Should the Department determine that AERC has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify AERC in writing. Within 30 days of being notified, AERC shall pay the amount specified in Paragraph D.2., above, as provided in Paragraph D.1., above.

SECTION E: Administrative Provisions

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

2. This Order addresses and resolves only those violations specifically alleged herein, including those matters addressed in the Notice of Violation Number 2008-05-PRO-601. 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 as may be authorized by law; or (3) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For the purposes of this Order and subsequent actions with respect to this Order only, AERC admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. AERC 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. AERC declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the 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 enforce this Order.
6. Failure by AERC 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. AERC 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. AERC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. AERC 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 the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of 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 AERC. Notwithstanding the foregoing, AERC agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:

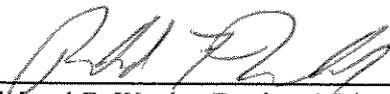
- (a) AERC petitions the Director or his designee to terminate the order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- (b) the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to AERC.

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

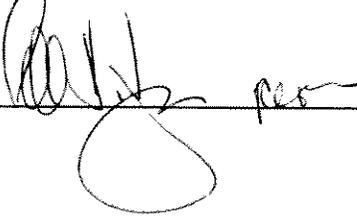
- 12. By its signature below, AERC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 22nd day of April, 2009.



Richard F. Weeks, Regional Director
Department of Environmental Quality

AERC.com, Inc. voluntarily agrees to the issuance of this Order.

Date: 2/20/09 By: 

Commonwealth/State of New Jersey
City/County of Morris

The foregoing document was signed and acknowledged before me this 20 day of February, 2009, by Peter J. Jegou, who is CEO of AERC.com, Inc., on behalf of the Corporation.


Notary Public

My commission expires: 12-11-2012

LOIS A ANDERSON
NOTARY PUBLIC
NEW JERSEY
MY COMMISSION EXPIRES 12/11/2012
BY: 

APPENDIX A - OPERATIONS

1. AERC shall choose one of the following 3 options, and shall notify DEQ of its choice no later than **60 days from the effective date of this order**:

a. AERC shall no longer operate as a Destination Facility in the Commonwealth of Virginia.

OR

b. AERC shall cease fluorescent lamp recycling operations involving the storage of universal waste for greater than 24 hours before recycling, until such time that AERC (i) applies for and is issued a Hazardous Waste Storage Facility permit by DEQ and (ii) demonstrates to DEQ *and receives written DEQ concurrence* that its operations meet the applicable requirements of 40 CFR §§ 265 and 273.

OR

c. AERC shall cease fluorescent lamp recycling operations until it can modify its operations such that universal waste is stored on-site less than 24 hours prior to crushing or other processing. AERC shall not resume operations until the Company demonstrates to DEQ *and receives written DEQ concurrence* that its operations meet the applicable requirements of 40 CFR §§ 265 and 273.

2. If option 1.b or 1.c above is chosen, the demonstrations required must be submitted prior to resuming crushing operations and **no later than 120 days from the effective date of this Order**, and must include documentation of the following:

a. The Facility must identify and demonstrate that there are markets for reclaimed materials and that the equipment is capable of recycling per 40 CFR 261.2(f).

b. Processing equipment must be inspected and certified by the manufacturer and a Professional Engineer, licensed in the Commonwealth of Virginia that the equipment operates and performs in accordance with the Department of Labor and Industry (DOLI) standards.

c. An Operations and Maintenance (O&M) manual must be prepared and submitted that documents the procedures that will be followed to ensure that the equipment will continue to be operated in a manner that is protective of human health and the environment. Any existing O&M manuals must be updated or revised as necessary to ensure phosphor dust and vapors are not emitted above acceptable limits.

d. The Facility must prepare and submit a plan for management of hazardous waste and universal waste received and processed at the facility as well as other wastes and

materials generated as a result of the facility's operations. The plan must ensure that all materials, wastes, and residues are managed so as to prevent releases including compliance with the requirements of 40 CFR 265.171 through 265.173. No crushing of lamps outside of process equipment shall be allowed. The plan must also detail the procedures that will be followed to ensure that no hazardous waste or universal waste received from off-site is stored onsite for more than 24 hours unless a permit authorizing storage of hazardous waste is first obtained from DEQ.

- e. Facility representatives must meet with DOLI to review worker safety requirements. The facility should submit a letter or other form of concurrence from DOLI that the Facility's proposed health and safety plan contains the required elements to comply with the applicable standards.
- f. The Facility must prepare and have available on-site the following items:
 - i. A contingency plan meeting the requirements of 40 CFR 265 Subpart D.
 - ii. A training plan meeting the requirements of 40 CFR 265.16.
 - iii. An inspection plan and schedule meeting the requirements of 40 CFR 265.15.
 - iv. A waste analysis and characterization plan for all solid and hazardous wastes received and generated as a result of the Facility's operations meeting the requirements of 40 CFR 265.13. Such plan must also address all applicable requirements of 40 CFR Part 268.

3. All requirements of Appendix A of this Order shall be submitted to:

Allison C. Dunaway
Enforcement Manager
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
Phone: (804) 527-5086
Fax: (804) 527-5106

Rob Timmins
Waste Program Manager
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
Phone: (804) 527-5161
Fax: (804) 527-5106

APPENDIX B – RCRA CLOSURE

1. AERC must perform closure of the unpermitted hazardous waste storage facility in accordance with 40 CFR § 264 (Subpart G – Closure and Post-Closure).
2. AERC must submit the closure plan, cost estimates for closure, and financial responsibility in accordance with 40 CFR §264.112(a), §264.142, §264.143, §264.1102 as applicable, **no later than 90 days after the execution of this Order by DEQ**. AERC shall respond to any Notices of Deficiency in accordance with their terms. Upon approval by DEQ, AERC shall initiate the activities called for in the approved closure plan and shall abide by the terms and schedule therein.
3. If AERC is unable to demonstrate “clean closure” in accordance with 40 CFR 264.1102(a) and 264.111, AERC shall perform closure and post-closure care as applicable to landfills (40 CFR 310). **No later than 90 days** of this determination, AERC must submit a closure plan, a post-closure care plan, groundwater monitoring plan, cost estimate and financial responsibility in accordance with the requirements for landfills specified in Subparts, F, G and H of 40 CFR 264. Upon approval by DEQ, AERC shall initiate the activities called for in the approved plans and shall abide by the terms and schedule therein.
4. **No later than 180 days after** the determination that the Facility cannot practicably be decontaminated or all contaminated subsoils or other media cannot be removed, AERC shall submit a permit application to address post-closure care. The permit application shall include the permit application fee as required by 9 VAC 20-60-1285 of the VHWMR.
5. All requirements of Appendix B of this Order shall be submitted to:

Leslie A. Romanchik
Director, Office of Hazardous Waste Program Director
VA DEQ
629 East Main St.
P.O. Box 1105
Richmond, Virginia 23218
Phone: (804) 698-4129
Fax: (804) 698-4234

APPENDIX C
SUPPLEMENTAL ENVIRONMENTAL PROJECT

AERC shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by AERC is to provide free collection and recycling services to tanning salons in the Richmond metropolitan area. As part of this SEP, AERC shall:
 - a) Provide Recycle Kit containers with pre-paid shipping labels to each selected business;
 - b) Provide basic instructions with each box and information regarding universal waste lamp management and responsibilities of the targeted industry; and
 - c) Provide free recycling services for all prepaid Recycle Kit containers returned to AERC from the selected businesses.
2. The SEP shall begin no later than 60 days from the execution date of this Order, and shall continue until the cost of the SEP reaches at least \$25,000. AERC shall provide free recycling services for all prepaid Recycle Kit containers provided to and returned by the selected businesses as part of this SEP, even if AERC has already met its \$25,000 obligation.
3. AERC shall submit progress reports on the SEP on a quarterly basis, due the 10th day of each quarter. The first report shall be due the 10th day of the 4th month after the SEP begins.
4. AERC shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. AERC shall submit the final report and certification to the Department within 30 days of its determination that it has met its \$25,000 obligation.
 - a) The written report shall include written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from AERC's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.
5. If the SEP has not or cannot be completed as described in the Order **by April 30, 2011**, AERC shall notify DEQ in writing **no later than May 10, 2011**. Such

notification shall include payment of the amount specified in Paragraph D.2 as described in Paragraph D.1.

6. AERC hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
7. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Allison C. Dunaway
Enforcement Manager
VA DEQ – Piedmont Regional Office
4949-A Cox Rd.
Glen Allen, Virginia 23060
Phone: (804) 527-5086
Fax: (804) 527-5106