



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
VALLEY REGIONAL OFFICE

Douglas W. Domenech  
Secretary of Natural Resources

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David K. Paylor  
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Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
ATLANTIC FABRITECH, LLC  
FOR  
ATLANTIC FABRITECH  
EPA ID No. VACESQG 31109**

DEQ-VALLEY

DEC 15 2011

TO: \_\_\_\_\_  
FILE: \_\_\_\_\_

## **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 Atlantic Fabritech, LLC, regarding Atlantic Fabritech, 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. "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.
2. "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 20-60-261(A).
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

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. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" or "Site" means the Atlantic Fabritech, LLC's Facility located at 806 Island Ford Road, in McGaheysville, Rockingham County, Virginia.
7. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
8. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
9. "Atlantic" means Atlantic Fabritech, LLC, a limited liability corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Atlantic is a "person" within the meaning of Va. Code § 10.1-1400.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
12. "Regulations" or "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 Code of Federal Regulations (CFR), with the effected 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.
13. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
14. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).
15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.
17. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

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.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Atlantic owns and operates the Facility in Rockingham County, Virginia. The Facility operates a metal fabrication shop specializing in the production of aboveground storage tanks. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. At the Facility, Atlantic generates waste solids containing flammable liquid Xylene, Xylene rags, waste paint and waste paint rags which are characteristic Hazardous Waste Solids. This Hazardous Waste is accumulated in containers at the Facility after its generation.
3. On June 20, 2011, Department staff inspected the Facility 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 2009 hazardous waste disposal manifest was the last known disposal documentation for the Facility. Since that last disposal shipment in 2009 Atlantic accumulated 440 gallons (approximately 2640 lbs or 1,197 kilograms) of hazardous waste for 712 days and the Facility had not received an EPA identification number. 40 CFR 261.5(g)(2) requires that, if a CESQG accumulates greater than 1,000 kilograms of hazardous waste during any calendar month, that waste is subject to regulation under the requirements for SQG. 40 CFR 262.34(d)-(e) provides the regulatory requirements for managing hazardous waste as an SQG, specifically, allowing the accumulation of hazardous waste for up to 180 days (or 270 days if transport will be over 200 miles) without a permit. 40 CFR 262.12(a) requires a generator of hazardous waste to obtain an EPA identification number. This number is based upon the applicants registered amount of hazardous waste generation.
  - b. There were containers, drums and buckets accumulated in two locations which included the paint booth area and the accumulation area outside the main building. These drums were filled, but not identified or documented, with Xylene, Xylene rags, waste paint, waste paint rags, and used oil. Upon consolidation there were a total of eight 55-gallon drums, and two 5-gallon buckets of uncharacterized waste material on site. A municipal waste dumpster also contained spilt waste paint residuals. Atlantic had no documentation of performing Hazardous Waste characterization for these materials. In both 2009 and on June 21, 2011, Atlantic Fabritech classified and shipped 500 pounds and 165 gallons, respectively, of similar waste materials as Hazardous Waste. No written records were provided of the waste characterization for disposal. 40 CFR 262.11 requires that a generator of solid waste must determine if the waste is a hazardous waste.

- c. Prior to the consolidation noted in observation 3.b., there were sixteen 55-gallon drums and an estimated twenty 5-gallon buckets containing hazardous waste on site in both the accumulation and satellite areas which were not dated, were unlabeled, and were left open. 40 CFR 262.34(a)(2) & (3) requires that the date upon which each period of accumulation begins and the words, "Hazardous Waste" is clearly marked and visible for inspection on each container. 40 CFR 262.34(c)(1)(ii) requires that containers in accumulation areas must be marked "hazardous waste" or with the actual contents. 40 CFR 262.34(d)(2) requires that the containers used for accumulation and storage of hazardous waste must be in good condition, compatible with the waste stored, closed when not in use, handled carefully and inspected weekly.
  - d. The containers noted in observation #3.c. were rusty and leaking. There were also signs of spillage and storm water runoff from these containers. Additionally, a 55-gallon drum that was cut in half and lying on its side outside of the building was used for the open air storage of waste paint filters from the spray booth. 40 CFR 262.34(d)(2) requires that the containers used for accumulation and storage of hazardous waste must be in good condition, compatible with the waste stored, closed when not in use, 40 CFR 262.34(d)(5)(iv)(B) requires that the generator contain the flow of hazardous waste from a spill to the extent possible, as soon as is practicable, and to clean up the hazardous waste and any contaminated materials or soil.
  - e. Facility personnel did not inspect the hazardous waste accumulation areas on a weekly basis. 40 CFR 262.34(d)(2) requires that the containers used for accumulation and storage of hazardous waste must be inspected weekly.
4. On September 12, 2011, based on the inspection and follow-up information, the Department issued Notice of Violation No. 11-09-VRO-001 to Atlantic for the violations described in paragraphs C(4) above.
5. On September 15, 2011, the President of Atlantic, Gary L. Snyder, responded to the NOV in writing, stating that they had resolved some of the noted violations. The letter included photographs of covered waste collection/storage drums. Based on the documentation submitted, DEQ staff were unable to determine the extent to which any of the violations had been resolved.
7. On September 29, 2011, DEQ staff met with the President of Atlantic to discuss potential remedies to the violation noted in the NOV. The following violations were confirmed during the meeting:
  - a) Generation and accumulation of SQG amounts of hazardous waste (paragraph C.4.a.) without an EPA identification number. Based on the quantity of hazardous waste generated and accumulated, Atlantic is a SQG.
  - b) Failure to determine if solid waste was actually hazardous waste.
  - c) Hazardous Waste containers in both the satellite and accumulation areas were not properly labeled.

- d) Some Hazardous Waste containers in use were rusty, leaking and or causing spills to occur.
- e) Failure to perform weekly inspections of the hazardous waste accumulation and storage areas.

A corrective action plan was devised and agreed upon for all the violations noted in the NOV. Implementation time for this plan was less than thirty days.

- 8. On October 6, 2011, DEQ staff received an email from Atlantic stating that they were addressing the remaining issues cited in the NOV.
- 9. On October 27, 2011, DEQ staff received a Form 8700-12 from Atlantic, providing notification of the Facility's SQG status and a copy of their weekly inspection reports for October 2011.
- 10. On October 31, 2011, DEQ staff conducted a hazardous waste compliance inspection of the Facility. During the inspection, DEQ staff observed that all of the violations noted during the June 20, 2011, had been resolved.
- 11. Based on the results of June 20, 2011, inspection and the documentation submitted during September and October 2011, the Board concludes that Atlantic has violated 40 CFR 261.5(g)(2), 40 CFR 262.34(d)-(e), 40 CFR 262.12(a), 40 CFR 262.11, 40 CFR 262.34(a)(2) & (3), 40 CFR 262.34(c)(1)(ii), and as described in paragraphs C(4) through C(7), above.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Atlantic, and Atlantic agrees to pay a civil charge of \$11,043.00, 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

Atlantic shall include its Federal Employer Identification Number (FEIN), 20-2614553, 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 Atlantic for good cause shown by Atlantic, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, 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, Atlantic admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Atlantic 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. Atlantic declares 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 Atlantic 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. Atlantic 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. Atlantic shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Atlantic 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 Atlantic 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 Atlantic.
11. This Order shall continue in effect until:
  - a. Atlantic 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 Atlantic.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Atlantic 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 Atlantic 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 Atlantic certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Atlantic to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Atlantic.

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, Atlantic voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20<sup>th</sup> day of January, 2012<sup>ate</sup>

Amy Thatcher Owens  
Amy Thatcher Owens, Regional Director  
Department of Environmental Quality

Atlantic Fabritech, LLC voluntarily agrees to the issuance of this Order.

Date: 12/14/11 By: Gary L. Snyder  
Gary L. Snyder President  
Atlantic Fabritech, LLC

Commonwealth of Virginia  
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 14 day of December, 2011, by Gary Snyder who is President of Atlantic Fabritech, LLC, on behalf of the company.

Constance M Roach  
Notary Public  
7373256  
Registration No.

My commission expires: 6/30/14

Notary seal:

