



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN VIRGINIA REGIONAL OFFICE  
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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Jeffery A. Steers  
Regional Director

### VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION

#### ORDER BY CONSENT

#### ISSUED TO

#### ATLANTIC RESEARCH CORPORATION

#### FOR

#### ATLANTIC RESEARCH CORPORATION - GAINESVILLE VAD023741705

#### SECTION A: Purpose

This is a Consent Order issued under the authority of Section 10.1-1455 of the Code of Virginia between the Virginia Waste Management Board and Atlantic Research Corporation (ARC), for the purpose of resolving certain violations of environmental laws and regulations.

#### SECTION B: Definitions:

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

1. "ARC" means the Atlantic Research Corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia and described in Va. Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Facility" means the former rocket motor and generator manufacturing business formerly operated by Atlantic Research Corporation located at 5945 Wellington Road in Gainesville, Virginia.

6. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
7. "Order" means this document, also known as a Consent Order.
8. "Va. Code" means the Code of Virginia (1950), as amended.

### **SECTION C: Finding of Facts and Conclusions of Law**

1. The Facility was operated by Atlantic Research Corporation (ARC) in Gainesville, Virginia. Since 1951, the Facility manufactured and assembled solid rocket motors and gas generators, mainly as a contractor to the U.S. Department of Defense. The Facility is a large quantity generator of hazardous waste with an EPA ID number of VAD023741705.
2. The Facility ceased all production activities on April 17, 2005 and the last burn was conducted in the Thermal Treatment Units (TTUs) on July 6, 2005.
3. On September 27, 2005, DEQ approved the RCRA Facility Closure Plan (Plan) for the TTUs. As approved, the Plan stipulated that closure activities would commence within 15 days of DEQ's approval of the Plan. The Plan was amended to reflect that Day 0 of the Plan schedule would begin on January 16, 2006 by correspondence dated January 27, 2006.
4. During a compliance evaluation inspection of the Facility on June 13, 2006, DEQ observed a number of violations regarding the improper handling and storage of hazardous wastes at the Facility. The violations appeared to be a result of the action taken by Environmental Alliance, the company that ARC had contracted with to close the Facility.
5. On June 27, 2006, DEQ issued a Notice of Violation (NOV) that set forth the following observations and violations from the site inspection:
  - I. *Observations:* Three drums of hazardous waste removed from TTU 1 and TTU 3 ash pans were stored outside and were in poor condition, uncovered, or not properly labeled. The majority of ash removed from the TTUs was being stored in the less than 90 day storage area in 68 waste drums labeled with an accumulation start date of May 19, 2006.

*Legal requirements:* Closure Plan Section 8.0, Section 5 requires the Owners to "Place accumulated ash and other residues in containers and transport to either the existing Building 110 accumulation area...or the existing main less than 90-day chemical waste handling area adjacent to Building 107."

40 CFR 262.34(a) states, "Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that: (1) The waste is placed: (i) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265; and/or...(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; (3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste..."

40 CFR 265.171 states, "If a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this part."

40 CFR 265.173(a) states, "A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

40 CFR 265.174 states, "The owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors."

- II. *Observations:* Velostat bags, building air filters, and other unidentifiable wastes were burned in two metal drums without a permit. These drums were not a permitted treatment unit for hazardous or non-hazardous solid waste. Records of hazardous waste determinations and treatment were not maintained.

*Legal requirements:* 40 CFR 262.11 states, "A person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste..."

40 CFR 270.1(c) states, "RCRA requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in 40 CFR part 261."

Va. Code § 10.1-1426(A) states, "No person shall transport, store, provide treatment for, or dispose of a hazardous waste without a permit from the Director."

Va. Code § 10.1-1408.1(A) states, "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."

- III. *Observations:* Numerous non-bulk containers of chemicals, paints, adhesives, etc. removed from the production buildings as part of the closure activities were being stored at an outdoor area adjacent to the less than 90-day hazardous waste storage area. These materials included lead acid batteries, partially-full bottles of sulfuric, hydrochloric, and nitric acids and sodium iodide, open containers of partially-solidified and contaminated waste paint, and expired adhesives. The contents of several 55-gallon drums and smaller containers could not be identified by site personnel. Precipitation had leaked through the roof and was collecting in several open 5-gallon containers of unidentified material and into a larger container that held pumps used to transfer fuel or chemicals. Incompatible substances, sodium iodide and the acids, were stored in the same box.

*Legal requirements:* 40 CFR 262.11 states, "A person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste..."

40 CFR 262.34(a) states, "Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that: (1) The waste is placed: (i) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265; and/or... (2) The date upon which each period of accumulation begins is clearly marked and visible

for inspection on each container; (3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste..."

40 CFR 265.173(a) states, "A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

40 CFR 265.174 states, "The owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors."

40 CFR 265.177(c) states, "A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device."

IV. *Observations:* Four 55-gallon drums containing burn pan ash stored at the less than 90-day area, were not labeled with the accumulation start date.

*Legal requirements:* 40 CFR 262.34(a)(2) requires that, "The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container."

V. *Observations:* Several drums reportedly containing ash from the Large Explosive Device De-activation Unit were not labeled or marked with their contents and were in poor condition. Subsequently, this waste was found to be a hazardous waste having a D006 waste code.

*Legal requirements:* 40 CFR 262.11 states, "A person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste..."

VI. *Observations:* Drums being used to transport pan ash had a weight rating which was less than the weight of the ash.

*Legal requirements:* 40 CFR 262.30 states, "Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable Department of Transportation regulations on packaging under 49 CFR parts 173, 178, and 179."

6. On July 6, 2006, DEQ conducted a follow-up site inspection and observed that all of the pan ash and the improperly stored waste had been removed from the previous storage area. An additional inspection was conducted on October 30, 2006 allowing DEQ to conclude that the violations recorded during the June 13, 2006 inspection have been addressed to the satisfaction of DEQ.
7. On July 31, 2006, DEQ received a letter from Environmental Alliance dated July 28, 2006 in response to the NOV. The letter responded to each of DEQ's observations and described steps ARC had taken to correct the deficiencies. The hazardous materials were transported off-site on June 30, 2006 for treatment and disposal as hazardous wastes by Clean Harbors, a transporter and treatment, storage and disposal business.

#### **SECTION D: Agreement and Order**

Accordingly, the Virginia Waste Management Board, by virtue of the authority granted it in Va. Code §§ 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455, orders Atlantic Research Corporation and Atlantic Research Corporation agrees that:

1. Atlantic Research Corporation shall pay a civil charge of \$13,500 within 30 days of the effective date of the Order in settlement of the alleged violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

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

With the payment, either on a transmittal letter or as a notation on the check, Atlantic Research Corporation shall indicate that the payment is submitted pursuant to this Order and shall include the Federal Identification Number for Atlantic Research Corporation.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Atlantic Research Corporation, for good cause shown by Atlantic Research Corporation, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notice of Violation. 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 the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Atlantic Research Corporation neither admits nor denies the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Atlantic Research Corporation 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 Research Corporation declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control 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.

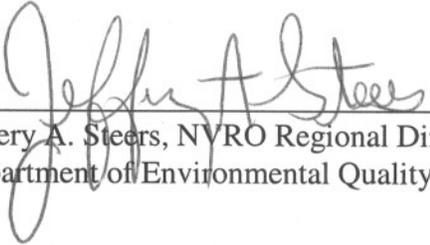
6. Failure by Atlantic Research Corporation to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director 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 Research Corporation shall be responsible for failure to comply with any of the terms and conditions by this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Atlantic Research Corporation shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Atlantic Research Corporation shall notify the DEQ Regional Director in writing 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 within 48 hours of learning of any condition above, which Atlantic Research Corporation 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 Research Corporation. Notwithstanding the foregoing, Atlantic Research Corporation agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Atlantic Research Corporation. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Atlantic Research Corporation 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, Atlantic Research Corporation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17<sup>th</sup> day of January, 2006.

  
Jeffery A. Steers, NYRO Regional Director  
Department of Environmental Quality

Atlantic Research Corporation voluntarily agrees to the issuance of this Order.

By: 

Date: 11/9/06

~~Commonwealth of Virginia~~ STATE of New Jersey  
City/County of Bergen

CATHERINE FINIZIO  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES MAY 6, 2009

The foregoing document was signed and acknowledged before me this 9<sup>th</sup> day of

November, 2006, by Robert L. Iulianci, who is  
(name)

Vice President of Atlantic Research Corporation, on behalf of the Corporation.  
(title)

  
Notary Public

My commission expires: May 6, 2009