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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
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Secretary of Natural Resources

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Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO EPIPHANY STUDIOS, INC. EPA ID No. VACESQG31204

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 Epiphany Studios, Inc. 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 conditionally exempt small quantity generator.

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. "Epiphany" means Epiphany Studios, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Epiphany is a "person" within the meaning of Va. Code § 10.1-1300.

7. "Facility" or "Site" means the Epiphany Studios, Inc. Facility located at 2091 Guard Hill Road, in Middletown, Virginia.

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. "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. "RCRA" means the Resource Conservation and Recovery Act, enacted in 1976.

13. "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 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.

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

15. "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).

16. "TCLP" means the Toxicity Characteristic Leaching Procedure, which is an analytical method designed to determine the mobility of both organic and inorganic analytes present in liquid, solid, and multiphasic wastes.

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

18. "VAC" means the Virginia Administrative Code.

19. "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.

20. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Epiphany Studios, Inc. owns and operates a stained glass manufacturing facility in Middletown, Virginia. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations. The Facility is a conditionally exempt small quantity generator of hazardous waste.

2. At the Facility, Epiphany generates the following solid wastes which are also hazardous wastes. Each waste is listed with associated waste codes as described in 40 CFR § 261.24 and 261.31. This hazardous waste is accumulated in containers at the Facility after its generation.

Cadmium:	D006
Chromium:	D007
Lead:	D008
Fluorescent Bulbs:	D009
Paints, Solvents, Thinners:	D001, F003, F005

3. On July 16, 2012, in response to a pollution complaint, DEQ 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. Epiphany generates solid wastes and had not determined if these wastes were hazardous wastes.
    b. Epiphany was not sending its hazardous waste to permitted hazardous waste management facilities to be disposed or recycled.
    c. Uncharacterized process rinse-water was being dumped on the ground behind the facility.
    d. Epiphany is neither permitted nor authorized to treat or dispose of its hazardous waste in an on-site facility.

4. 40 CFR 262.11 as referenced in 9 VAC 20-60-262 of the VHWMR states that "A person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method…"

5. 40 CFR 261.5 (g)(3) as referenced in 9 VAC 20-60-261 of the VHWMR states that "A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;
(ii) In interim status under parts 270 and 265 of this chapter;
(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter…"

6. On July 26, 2012, Warning Letter No.: WS-12-07-VRO-010 was issued for the apparent violations listed above.

7. On August 17, 2012, Epiphany sent a letter to DEQ that stated that they had begun collecting their solid waste on site until proper disposal methods were determined.

8. On August 22, 2012 Epiphany forwarded characterization of the rinse-water to DEQ demonstrating that it exceeded the TCLP limit for Lead (48.4 mg/L) and also contained Chromium and Cadmium at concentrations below their respective TCLP values. On December 7, 2012, SCS Engineers submitted, on behalf of Epiphany, characterization results of soil samples collected from an area where Epiphany had been dumping the rinse-water. The results showed soil contaminated with elevated Lead (max concentration of 982 mg/kg) and Cadmium (max concentration of 113 mg/kg) in two locations. These wastes are identified as toxicity characteristic metal wastes in 40 CFR 261.24. Lead waste exceeding the regulatory level of 5.0 mg/L is EPA listed hazardous waste No. D008. Cadmium waste exceeding the regulatory level of 1.0 mg/L is EPA listed hazardous waste No. D006.

9. 40 CFR 261.5(g)(3) as referenced in 9 VAC 20-60-261 of the VHWMR states that "a conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is.." permitted or authorized to manage this hazardous waste.

10. 9 VAC 20-81-40 states that "Prohibitions.
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."

11. 40 CFR 268.34 (a) as referenced in 9 VAC 20-60-268 state that "Effective August 24, 1998, the following wastes are prohibited from land disposal: the wastes specified in 40 CFR Part 261 as EPA Hazardous Waste numbers D004-D011 that are newly identified

(i.e. wastes, soil, or debris identified as hazardous by the Toxic Characteristic Leaching Procedure but not the Extraction Procedure), and waste, soil, or debris from mineral processing operations that is identified as hazardous by the specifications at 40 CFR Part 261."

12. On December 7, 2012, SCS Engineers, on behalf of Epiphany, submitted soil sampling results that estimated the volume of impacted soil could be contained in one 55 gallon drum. The impacted area was estimated to be 8 square feet.

13. On March 11, 2014, NOV No.: WS-12-07-VRO-010 was issued for the violations listed above.

14. On March 25, 2014, DEQ staff met with the Facility representative, who stated that he was unaware that the violation had not been resolved, due to the departure of a key employee from the company. He agreed to have the contaminated soil removed and disposed of promptly.

15. On April 10, 2014, approximately 1,000 pounds of contaminated soil was excavated by Silka Environmental Services, Inc. and disposed of by Environmental Enterprises, Inc.

16. On May 12, 2014, a soil remediation report was submitted by Silka Environmental Services, Inc. on behalf of Epiphany, confirming that clean-up activities at the site are complete.

17. Based on the results of the July 16, 2012 inspection, the March 25, 2014 meeting and the additional information submitted on May 12, 2014, the Board concludes that Epiphany has violated 9 VAC 20-60-262, 9 VAC 20-81-40, 9 VAC 20-60-261, and 9 VAC 20-60-268 as described in paragraphs C(3) through C(12) above.

18. Epiphany submitted documentation on May 12, 2014 that verifies that the violations described in paragraphs C(3) through C(12), 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 Epiphany, and Epiphany agrees to:

1. Pay a civil charge of $6,825 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
September 1, 2014	$1,706.25 or balance
December 1, 2014	$1,706.25 or balance
March 1, 2015	$1,706.25 or balance
June 1, 2015	$1,706.25

2. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Epiphany. Within 15 days of receipt of such letter, Epiphany shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

3. 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

4. Epiphany shall include its Federal Employer Identification Number 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Epiphany shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Epiphany for good cause shown by Epiphany, 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 and in NOV No. WS-12-07-VRO-010 dated March 11, 2014. 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, Epiphany admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Epiphany 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. Epiphany 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 Epiphany 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. Epiphany 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Epiphany shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Epiphany 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 to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any 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 Epiphany. Nevertheless, Epiphany 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 Epiphany has completed all of the requirements of the Order;

    b. Epiphany 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 Epiphany.

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

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, Epiphany Studios, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18th day of July, 2014.

Amy T. Owens, Regional Director
Department of Environmental Quality

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Epiphany Studios, Inc. voluntarily agrees to the issuance of this Order.

Date: 6-10-14 By: _____, President
Richard B. Davis Title
Epiphany Studios, Inc.

Commonwealth of Virginia
City/County of Front Royal / Warren

The foregoing document was signed and acknowledged before me this 10th day of June, 2014, by RICHARD B. DAVIS who is PRESIDENT of Epiphany Studios, Inc., on behalf of the company.

_____
Notary Public

328077
Registration No.

My commission expires: Apr. 30, 2015

Notary seal:

JOANNE BERTA
Notary Public
Commonwealth of Virginia
328077
My Commission Expires Apr 30, 2015