COMMONWEALTH of VIRGINIA

L. Preston Bryant, Jr
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
West Central Regional Office
3019 Peters Creek Road, Roanoke, Virginia 24019
Telephone (540) 562-6700, Fax (540) 562-6725
www.deq.virginia.gov

David K. Paylor
Director

Steven A. Dietrich
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD
ORDER BY CONSENT
ISSUED TO
KELTECH OF VIRGINIA, INC.

Section A: Purpose

This is a consent order issued under the authority of §§ 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455 of the Code of Virginia (1950), as amended, between the Virginia Waste Management Board and Keltech of Virginia, Inc. to resolve certain violations of environmental laws and/or regulations.

Section B: Definitions

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

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

2. "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.

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

4. "Director" means the Director of the Department of Environmental Quality.

5. "Keltech" means Keltech of Virginia, Inc., DBA Keltech, Inc., a Virginia corporation registered and authorized to do business in Virginia under Corporate I.D. No. 0335958-5.

6. "Order" means this document, also known as a consent order.

7. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* ("HWMR"). The specific provisions of Title 40 of the Code of Federal

7. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* ("HWMR"). The specific provisions of Title 40 of the Code of Federal Regulations ("CFR") cited herein are incorporated by reference at 9 VAC 20-60-260, 9 VAC 20-60-261, 9 VAC 20-60-262, 9 VAC 20-60-264, 9 VAC 20-60-265, 9 VAC 20-60-268, and 9 VAC 20-60-270.

8. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*

9. "Regional Office" means the West Central Regional Office of the Virginia Department of Environmental Quality, which is located at 3019 Peters Creek Road, Roanoke, Virginia 24019.

10. "TSDF" means a permitted hazardous waste treatment, storage, and disposal facility, as described at 40 CFR Part 270.

11. "US EPA" means the United States Environmental Protection Agency, an agency of the United States.

12. "Ohio EPA" means the Ohio Environmental Protection Agency, an agency of the State of Ohio.

Section C: Findings of Fact and Conclusions of Law

1. On January 4 and February 13, 2007, DEQ staff inspected the Keltech electronics assembly facility at 7508 Hitech Road in Roanoke, Virginia. Keltech is registered with the Department and the US EPA as a conditionally exempt small quantity generator of hazardous waste.[1]

2. During the inspections, Keltech provided documentation indicating that from 2002 through December 2006, it had disposed of wipes contaminated with lead solder by shipping the wipes to Metallic Resources, Inc. ("MRI") in Twinsburg, Ohio for recycling. Keltech believed that the wipes were properly shipped under a recycling exemption and that a hazardous waste determination pursuant to the Regulations was accordingly not necessary. Keltech had been sending waste lead solder to MRI for recycling during the same period, and MRI had been properly recycling the waste lead solder.

3. On March 7, 2007, DEQ issued a Warning Letter to Keltech alleging that Keltech had failed to make a hazardous waste determination for the wipes as required by 40 CFR 261.5(f). The Warning Letter requested that Keltech make that determination. In a letter dated March 22, 2007, Keltech stated that the wipes are a characteristic hazardous waste because of lead content. The appropriate US EPA ID number for this type of waste is D008.

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[1] Criteria for conditionally exempt small quantity generator status are specified at 40 CFR 261.5.

4. In the spring of 2007, DEQ staff was informed by the Ohio EPA that MRI is not a permitted TSDF and that MRI had not been recycling the waste wipes. Instead, MRI had stored over 4,000 pounds of lead-contaminated wipes.

5. On May 30, 2007, DEQ issued a Notice of Violation ("NOV") to Keltech alleging failure to make a hazardous waste determination for the wipes and failure to deliver the wipes to a permitted TSDF. The NOV alleged only past violations. No corrective action by Keltech is necessary.

6. On June 18, 2007, Keltech met with DEQ enforcement staff to discuss the NOV. At the meeting, Keltech provided documentation of past disposal costs of the wipes as solid wastes and current costs of disposal of the wipes as hazardous wastes. Of the total civil charge, $16,988 is allocated to the recovery of economic benefit of noncompliance.

Section D: Agreement and Order

Accordingly, by virtue of the authority of Va. Code § 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455, and upon consideration of Va. Code § 10.1-1186.2, the Board orders Keltech, and Keltech agrees, to perform the actions described below and in Appendix A of this Order. In addition, the Board orders Keltech, and Keltech voluntarily agrees, to pay a civil charge of $20,000.00 in settlement of the violations cited in this Order.

1. Keltech shall pay $17,300.00 of the civil charge within 30 days of the effective date of this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

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

   The payment shall include Keltech's Federal Identification Number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

2. Keltech shall satisfy $2,700.00 of the civil charge upon completing the Supplemental Environmental Project ("SEP") described in Appendix A of this Order.

3. The net cost of the SEP to Keltech shall not be less than the amount set forth in Paragraph D.2. If

it is, Keltech shall pay the remaining amount in accordance with Paragraph D.1 of this Order, unless otherwise agreed to by the Department. "Net costs" means the costs of the project minus any tax savings, grants and first-year operation cost reductions or other efficiencies.

4. By signing this Order, Keltech certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.

5. In the event that it publicizes the SEP or the SEP results, Keltech shall state in a prominent manner that the project is a part of a settlement for an enforcement action.

6. The Department has sole discretion to:

   a. Authorize any alternate SEP proposed by Keltech; and

   b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

7. Should the Department determine that Keltech has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Keltech in writing. Within 30 days of being notified, Keltech shall pay the amount specified in Paragraph D.2 as provided in Paragraph D.1 above.

8. Keltech acknowledges that it is solely responsible for completion of the SEP. Any transfer of funds, tasks, or otherwise by Keltech to a third party shall not relieve Keltech of its responsibility to complete the SEP as contained in this Order.

Section E: Administrative Provisions

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

2. This Order addresses only those violations pertaining to the facility specifically identified herein, including the violations specified in the Notice of Violation issued by the Department to Keltech on May 30, 2007. 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 terms of 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 purposes of this Order and subsequent actions with respect to this Order, Keltech admits the

jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Keltech 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. Keltech declares that it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act, Code § 10.1-1400 *et seq.*, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to 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, or to judicial review of, any action taken by the Board or the Director to enforce this Order.

6. Failure by Keltech 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 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. Keltech 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, or other act of God, war, strike, or other such occurrences. Keltech must show that the circumstances resulting in the noncompliance were beyond its control and were not due to a lack of good faith or diligence on its part. Keltech shall notify the Director and the Regional Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of 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.

   e. Failure to so notify the Director and the Regional Director of the Regional Office within 24 hours of the commencement of the condition causing or anticipated to

cause the delay or noncompliance 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. Any plans, reports, schedules or specifications attached hereto or submitted by Keltech 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.

11. This Order shall become effective upon execution by both the Director or his designee and Keltech. Notwithstanding the foregoing, Keltech agrees to be bound by any compliance date that precedes the effective date of this Order.

12. This Order shall continue in effect until either: a) Keltech 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 this Order, or b) the Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Keltech. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Keltech from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. By the signature of an authorized official below, Keltech voluntarily agrees to the issuance of this Order.

14. The undersigned representative of Keltech 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 Keltech to this Order. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Keltech.

And it is so ORDERED this day of SEPT. 4, 2007.

Steven A. Dietrich

Steven A. Dietrich, Regional Director
West Central Regional Office
Department of Environmental Quality

Seen and Agreed to: _____
Keltech

The foregoing instrument was acknowledged before me on 07/26/07

by Michael Tesoro, COO, on behalf of Keltech,
(name) (title)

in the County/City of Roanoke, State/Commonwealth of Virginia.

Notary Public
Notary Reg. # 351124

My Commission expires: 09/30/2008

APPENDIX A
SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. The SEP to be performed by Keltech is donation of $2,700 to Hollins University to fund startup of an electronics recycling program.

2. The donation required by this SEP shall be completed within 30 days of the effective date of this Order.

3. Keltech shall provide the Department with written verification of completion of the donation required by this SEP by submitting a written report to DEQ within 30 days of completion of the donation. Keltech shall also provide a follow-up report to DEQ within 10 days of the first electronics recycling collection day funded by this SEP at Hollins University. The follow-up report shall describe the recycling activities that took place at the recycling event and the quantities and types of materials collected for recycling.

4. As a part of the donation completion report required by Paragraph 3 above, Keltech shall submit written verification of SEP costs to the Department in the form of invoices or other proof of payment of the final overall and net cost of the SEP. For the purposes of this submittal, net costs can be either the actual final net costs or the projected net costs if such projected net costs statement is accompanied by a CPA certification or certification from Keltech's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

5. Documents to be submitted to the Department regarding the SEP shall be sent to: Robert Steele, Va. Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019.