



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO KELMAR INCORPORATED EPA ID No. VAD058592387

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 Kelmar Incorporated, 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 20-80-120(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 Kelmar Incorporated's Facility located at 5212 Midland Road in Midland, 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. "Kelmar" means Kelmar Incorporated, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Kelmar Incorporated 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. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
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 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.
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. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
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.

19. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

SECTION C: Findings of Fact and Conclusions of Law

1. Kelmar owns and operates the Facility in Midland, Virginia. The Facility conducts small scale specialty metal fabrication business, which includes metal machining, grinding, painting and finishing. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. Kelmar submitted a RCRA Subtitle C Site Identification Form (December 8, 1986) that gave notice of regulated waste activities at the Facility. At the time, the Facility was classified as an SQG of hazardous waste. Kelmar was issued an EPA ID No. VAD058592387 for the Facility.
3. At the Facility, Kelmar generates a waste paint and spent solvent mixture, exhaust paint booth filters and solvent rags which are solid wastes. The exhaust paint booth filters are also hazardous wastes – a F005 listed waste as described in 40 CFR § 261.31. The solvent contaminated rags and waste paint / spent solvent mixture are also hazardous wastes – F003/F005 listed waste as described in 40 CFR § 261.31 and ignitable characteristic wastes D001 as described in 40 CFR § 261.21. All hazardous wastes are currently accumulated in storage containers at the Facility after its generation.
4. On January 28, 2010, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations as a CESQG based on the current quantity of hazardous waste generated. Based on the inspection and follow-up information, Department staff made the following observations:
 - a. The Facility failed to complete a waste determination of the paint booth filters and solvent rags generated on-site.
 - b. The Facility failed to properly dispose of the hazardous waste, including exhaust paint booth filters and solvent contaminated rags.
5. 40 CFR § 262.11 requires that "[a] person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is hazardous waste...".
6. 40 CFR § 261.5(g)(3) requires 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..."
7. On April 22, 2010, based on the January 28, 2010 inspection and the provided follow-up information, the Department issued a NOV to Kelmar Incorporated for the violations described in paragraphs C(3) through C(6), above.

8. On April 26, 2010, Kelmar submitted a written response to the NOV to DEQ via electronic mail.
9. On May 26, 2010, Department staff met with representatives of Kelmar to discuss the violations, including Kelmar's written response. At the meeting Kelmar's President explained the new procedures of disposal. He stated that all the paint booth filters and rags are placed into drums for hazardous waste disposal. Additionally, he detailed the new procedures for sorting waste and the standard operating procedures that his personnel are to follow.
10. Based on the results of the January 28, 2010 inspection and the May 26, 2010 meeting, the Board concludes that Kelmar has violated 40 CFR 262.11 and 40 CFR 261.5 (g) as described in paragraphs C(3) through C(6), above.
11. In order for Kelmar to document its return to compliance, DEQ staff and representatives of Kelmar have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Kelmar Incorporated, and Kelmar Incorporated agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$4,716.00 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

Kelmar Incorporated shall include its Federal Employer Identification Number (FEIN) 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 Kelmar for good cause shown by Kelmar, 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, Kelmar admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Kelmar 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. Kelmar 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 Kelmar 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. Kelmar 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. Kelmar shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kelmar 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 Kelmar 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 Kelmar.
11. This Order shall continue in effect until:
 - a. Kelmar 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 Kelmar.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Kelmar 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 Kelmar 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 Kelmar 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 Kelmar to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Kelmar.

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, Kelmar voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28th day of October, 2010.



Thomas A. Faha, Regional Director
Department of Environmental Quality

Kelmar Incorporated voluntarily agrees to the issuance of this Order.

Date: 08.27.10 By: Mr. Glenn Kelly, PRESIDENT
(Person) (Title)
Kelmar Incorporated

Commonwealth of Virginia
City/County of Fauquier

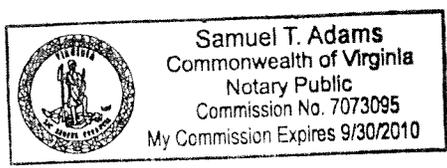
The foregoing document was signed and acknowledged before me this 27th day of August, 2010, by Glenn Kelly who is President of Kelmar Incorporated, on behalf of the corporation.

Samuel T. Adams
Notary Public

7073095
Registration No.

My commission expires: 9/30/2010

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Kelmar Incorporated shall submit within 30 days of effective date of this Order:

1. Photographs and documentary evidence demonstrating that the hazardous waste is being properly disposed of and that waste storage containers at the Facility are being maintained in good condition in accordance with the regulatory requirements.
2. A blank copy of the Facility's facility-wide daily/weekly checklist used to ensure compliance with the regulatory requirements, including the proper hazardous waste storage and disposal procedures for the paint booth.
3. Submit all requirements of Appendix A of this Order to:

Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193