COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO RICHMOND POWDER COATING, INC. EPA ID No. VAD982570095

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 Richmond Powder Coating, 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 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). The Regulation is now promulgated under 9 VAC 20-81-90(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 Richmond Powder Coating, Inc. Facility located at 5124 Glen Alden Drive in Henrico 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. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).

10. "Richmond Powder Coating" means Richmond Powder Coating, Inc., (formerly Packaging Gravure, Inc.) a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Richmond Powder Coating is a "person" within the meaning of Va. Code § 10.1-1400.

11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

12. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

14. "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.

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. "TSD" means treatment, storage and disposal.

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. "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. Richmond Powder Coating owns and operates the Facility in Henrico County, Virginia. The Facility is a former metal plater of flexographic, rotogravure and off-set plates and cylinders for the printing industry. The Facility has not conducted any plating since 2001. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. Richmond Powder Coating submitted a RCRA Subtitle C Site Identification Form on May 3, 1989, that gave notice of regulated waste activity at the Facility as a SQG of hazardous waste. Richmond Powder Coating was issued EPA ID No. VAD982570095 for the Facility.

3. Richmond Powder Coating is a SQG of hazardous waste. Hazardous wastes generated at this Facility include spent Chemsolv™ "Plate Wash." This waste is classified as characteristic (D001) hazardous waste due to its ignitability, and contains toluene and methyl isobutyl ketone, which are classified as F-listed (F005 and F003, respectively) hazardous wastes. This Facility also generates spent Chemsolv™ XL-40 "Dechrome Solution", which contains hydrochloric acid and possibly chromium, and is classified as characteristic (D002 and possibly D007) hazardous waste due to its corrosive characteristic and possible toxicity characteristic. This hazardous waste is accumulated in containers at the Facility after its generation. The facility currently does not generate new hazardous waste, but had sufficient quantities to be classified as a SQG pursuant to 40 CFR §261.5(g)(2).

4. On June 10, 2010, 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. The Facility had stored eight 55 gallon drums of spent "plate wash" hazardous waste and two 55 gallon drums of spent "Dechrome solution" hazardous waste, which were generated in 2001 or earlier and remained on site. The Regulations (40 CFR § 262.34(f)) state that a SQG that accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than more than 180 days is an operator of a storage facility and is subject to the requirements of 40 CFR § 264 and § 265 and the permit requirements of 40 CFR § 270. The Regulations (40 CFR § 270.1(c)) state in part that a permit is required for the treatment, storage, and disposal of any hazardous waste. The Department has not issued such a permit to Richmond Powder Coating.

b. A hose and pump were in place to pump liquid, which the facility indicated may be groundwater, out of a containment pit for tanks full of chrome plating solution to a floor drain. The Facility owner stated that the floor drain was connected to the regional sewage treatment plant. Sampling or analytical data for the discharged waste water could not be provided, and the Facility did not make a proper determination on this liquid prior to its discharge. The Regulations (40 CFR § 262.11) state that a person who generates a solid waste, as defined in 40 CFR § 261.2, must determine if that waste is a hazardous waste.

c. The inspector noted evidence of past spills or releases in the chrome plating room and in the former de-chrome area inside the Facility. Chrome stains and residues were found on the chrome plating floor, wall and in the trench drain at the southwest corner of the building, as well as the concrete floor and metal structures in the vicinity of the former de-chrome area where drums of hazardous waste were stored in the northwest corner of the building. This release of a product became a hazardous waste by being abandoned and by being disposed of pursuant to the Regulations. 40 CFR § 270.1 prohibits storage or disposal of a hazardous waste without a permit. 40 CRF § 262.34(d)(5)(iv)(B) requires SQGs to clean up hazardous waste spills and any contaminated media or soil. 40 CFR § 265.31 [as referenced by 40 CFR 262.34(d)(4) and 262.34(f)] states that facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned or non-sudden release of hazardous waste.

d. The characterization of waste currently generated and/or stored at this Facility (waste codes F003, F005, D001, D002, and possibly D007) has changed since the most recent notification of hazardous waste activity (D002 only in 1989), but records indicate that the Richmond Powder Coating did not submit an update to the local authorities, emergency facilities and DEQ. 40 CFR § 265.37(a) [as referenced by 40 CFR 262.34(d)(4) and 262.34(f)]) states that the owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations: (1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes; (2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority; (3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and (4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

e. None of the ten 55 gallon drums of hazardous waste, located in the former de-chrome area, were labeled with the accumulation start date(s) or with the term

"hazardous waste." The Regulations (40 CFR 262.34(d)(4)) state that an SQG may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator complies with the requirements of 40 CFR 262.34(a)(2) and (a)(3), which state,"(2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and (3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste."

5. On August 4, 2010, based on the inspection and follow-up information, the Department issued Notice of Violation No. 2010-08-PRO-601 to Richmond Powder Coating for the violations described in paragraph C4 a-e above.

6. Richmond Powder Coating responded to the NOV by requesting a meeting. On September 1, 2010, Department staff met with representatives of Richmond Powder Coating to discuss the violations. Richmond Powder Coating agreed to take steps to return to compliance, which, were outlined in a letter issued by the Department on September 1, 2010.

7. On September 9, 2010, Richmond Powder Coating submitted photographs verifying that the hazardous waste drums at the Facility are now properly labeled.

8. On October 8, 2010, Richmond Powder Coating submitted a certificate of disposal and a manifest indicating that the accumulated hazardous waste was transported to a permitted treatment, storage and disposal facility.

9. Based on the results of the June 10, 2010 inspection, the September 1, 2010 meeting, and the documentation submitted on September 9 and October 8, 2010, the Board concludes that Richmond Powder Coating has violated VHWMR and the Virginia Waste Management Act, as noted above.

10. Richmond Powder Coating has submitted documentation which verifies that the spill cleanup and chrome tank waste violations described in Section C above, have been corrected.

11. In order for Richmond Powder Coating to complete its return to compliance, DEQ staff and representatives of Richmond Powder Coating have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

12. Richmond Powder Coating submitted financial documents and requested an analysis for an inability to pay a civil charge. Based on a review of those documents by the Department's Office of Financial Assurance, the Department determined that Richmond Powder Coatings is not able to pay a civil charge.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Richmond Powder Coating, and Richmond Powder Coating agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Richmond Powder Coating for good cause shown by Richmond Powder Coating, 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, Richmond Powder Coating admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.

4. Richmond Powder Coating 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. Richmond Powder Coating 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 Richmond Powder Coating 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. Richmond Powder Coating 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. Richmond Powder Coating shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Richmond Powder Coating 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 Richmond Powder Coating. Nevertheless, Richmond Powder Coating 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 Richmond Powder Coating has completed all of the requirements of the Order;

b. Richmond Powder Coating 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 Richmond Powder Coating.

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

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, Richmond Powder Coating voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15th day of DECEMBER, 2011.

Michael P. Murphy, Regional Director
Department of Environmental Quality

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Richmond Powder Coating, Inc. voluntarily agrees to the issuance of this Order.

Date: 10/31/11 By: Virgil G. Jones
Virgil G. Jones, Former President
Richmond Powder Coating, Inc.

Commonwealth of Virginia

County of Henrico

The foregoing document was signed and acknowledged before me this 31st day of October, 2011, by Virgil G. Jones who was President of Richmond Powder Coating, Inc., on behalf of the corporation.

Constance M Frederickson
Notary Public

7219993
Registration No.

My commission expires: 10/31/2012
I was commissioned
as Constance S Wallenfelz

Constance S. Wallenfelsz
Commonwealth of Virginia
Notary Public
Commission No. 7219993
My Commission Expires 10/31/2012

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Waste from sump water

Richmond Powder Coating must submit documentation of proper disposal of the hazardous materials/waste from water collected in the secondary containment pit in accordance with the Regulations and within 45 days of the issuance of this Order.

2. Clean-Up

Within 90 days of the issuance of this Order, Richmond Powder Coating shall address and remediate hazardous materials/waste spills at the Facility in accordance with the Regulations. Within 120 days of issuance of this Order, Richmond Powder Coating shall submit a certification from a state certified professional engineer that the hazardous waste spills and any contaminated materials or soil were cleaned-up. If requested by DEQ, Richmond Powder Coating shall submit any documentation including sampling, plans, pictures or other information related to or supporting the certification or clean-up.

Within 120 days of issuance of this Order, Richmond Powder Coating shall have a certified P.E. submit a certification or documentation regarding the secondary containment pit for the tank and whether hazardous materials/waste appears to have entered or potentially entered or impacted groundwater at the facility. If hazardous materials/waste did enter the groundwater or appears to have entered the groundwater, Richmond Powder Coating shall take any steps required by DEQ to address the spills at the facility including but not limited to additional remediation, sampling, or submittal a closure plan or other clean-up plan required by DEQ.

If within 120 days of the issuance of this Order Richmond Powder Coating cannot submit the certification regarding clean-up of the hazardous materials/waste spills, it shall take any steps required by DEQ to address the spills at the facility including but not limited to additional remediation, sampling, or submittal a closure plan or other clean-up plan required by DEQ.

3. Contact

Unless otherwise specified in this Order, Richmond Powder Coating shall submit all requirements of Appendix A of this Order to:

Frank Lupini
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949A Cox Road,
Glen Allen, Virginia 23060
Frank.Lupini@deq.virginia.gov