COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
SAMPSON COATINGS, INC.
EPA ID No. VAD003109600

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 Sampson Coatings 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. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

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

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.

6. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

7. "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).

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

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

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

11. "Sampson" means Sampson Coatings, Inc, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Sampson is a "person" within the meaning of Va. Code § 10.1-1400.

12. "Site" or "Facility" means the Sampson Coatings, Inc. Facility located at 301 Hull Street Road in Richmond, Virginia.

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

14. "Universal waste" means any of the hazardous wastes meeting the definition provided in 40 CFR § 273.9 that are subject to the universal waste requirements of 40 CFR Part 273, including batteries at described at 40 CFR § 273.2, pesticides as described at 40 CFR § 273.3, mercury-containing equipment as described at 40 CFR § 273.4, and lamps as described at 40 CFR § 273.5.

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

16. "VAC" means the Virginia Administrative Code.

17. "VHWMR" or "Regulations" 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.

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.

SECTION C: Findings of Fact and Conclusions of Law

1. Sampson owns and operates the Facility, a paint and coating manufacturing, storage, and distribution business, in Richmond, Virginia. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. Sampson submitted a RCRA Subtitle C Site Identification Form (received by DEQ 9/26/1980) that gave notice of regulated waste activity at the Facility as a SQG of hazardous waste. Sampson was issued EPA ID No. VAD003109600 for the Facility. Subsequently, Sampson became a LQG of hazardous waste.

3. At the Facility, Sampson generates used solvents, sludge and paint related materials containing toluene and xylene, which are solid wastes. Toluene and xylene are also listed hazardous wastes with waste codes F003 and F005 respectively, as described in 40 CFR § 261.31, and both are ignitable characteristic wastes with waste code D001 as described in 40 CFR §261.21. This hazardous waste is accumulated in containers at the Facility after its generation.

4. On June 24 and 29, 2009, the Facility was inspected 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. Filters which contained used paint solids and sludge and are D001 hazardous waste were observed being air dried in open containers. The Regulations (40 CFR § 260.10) define "treatment" as "any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume". The Regulations (40 CFR § 270.1(c)) address the scope of RCRA permit requirement and state in part that RCRA requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste".

    b. The Material Data Sheet for polyurethane states "[w]aste from this product is hazardous as defined under *[RCRA]*." Dried used polyurethane filters were observed in the dumpster. The Regulations (40 CFR § 262.11) regarding hazardous waste determination state, "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: (a) He should first determine if the waste is excluded from

regulation under 40 CFR 261.4. (b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261. (c) For the purposes of compliance with 40 CFR 268, or if the waste is not listed in subpart D of 40 CFR 261, the generator must then determine whether the waste is identified in subpart C of 40 CFR part 261 by either: (1) Testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an alternate method approved by the Administration under 40 CFR 260.21; or (2) Applying knowledge of the hazard characteristics of the waste in light of the materials or the processed used."

c. Manifests for the previous three years were reviewed. Information entered in Column 12 was incorrect on three manifests as waste was measured in gallons (G), but recorded as pounds (P) or tons (T) on the manifests.

Date	Manifest No	Column 11	Column 12	Drums
05/15/07	1906229JJK	2,860	P*	50
10/02/06	1905783JJK	3,080	P*	56
06/08/06	60806	2,640	T*	48

*Incorrect information.

The Regulations (40 CFR § 262.20(a)) regarding the manifest general requirements state, "A generator… must prepare a Manifest…according to the instructions included in the Appendix to Part 262." Appendix to Part 262 Item 12 Units of Measure (weight/volume) directs the generator to enter, in designated boxes, the appropriate abbreviation from Table II (below) for the unit of measure.

TABLE II – UNITS OF MEASURE
G = Gallons (liquids only)….
P = Pounds.
T = Tons (2000 pounds)....

d. Sampson did not produce a copy of relevant land disposal restriction notification records when requested by Department staff during the site visit. The Regulations (40 CFR § 268.7) regarding recordkeeping requirements state in part (a) Requirements for generators: "(1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed…. (8) Generators must retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this section for at least three years from the date the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal…".

e. The Facility routinely accumulated up to 55 gallons of waste paint and solvents in an open-head 55-gallon drum in the R&D laboratory satellite accumulation area. Laboratory personnel indicated that the drum was normally stored with the lid loose on it, the ring around the middle of the drum, and the bolt loose. The drum

had been closed, dated, and moved to the 90-day accumulation area early on June 29, 2009 and had not yet been replaced. The Regulations (40 CFR § 262.34) address accumulation time as follows, "(c) A generator may accumulate as much as 55 gallons of hazardous waste… in containers at or near the point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section, provided that he: (1) Complies with §§265.171, 265.172, and 265.173(a) of this chapter…". In addition, the Regulations (40 CFR § 265.173) discuss management of containers as follows, "(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

f. The hazardous waste contingency plan did not list the name of the current emergency coordinators. The corporate contact listed on page 4 of the plan had previously changed. The Regulations (40 CFR § 262.34) state "(a) … a generator may accumulate hazardous waste on-site for 90 days or less without a permit…, provided that:… (4) The generator complies with the requirements for owners or operators in Subparts C and D of 40 CFR part 265, with § 265.16, and with 40 CFR 268.7(a)(5)." Subpart D includes a discussion on content of contingency plan, and 40 CFR § 265.52(d) states, "The plan must list all names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator…, and this list must be kept up to date." Subpart D also includes amendment of contingency plans, and 40 CFR § 265.54 states, "The contingency plan must be reviewed, and immediately amended, if necessary, whenever:… (d) The list of emergency coordinators changes."

g. On June 24 two fluorescent lamps were observed stored loose and leaning against the wall in the Facility. On June 29, the lamps were observed in two open, labeled, and dated boxes stored in the 90-day accumulation area. Facility personnel had tape ready and closed the boxes at that time. The Regulations (40 CFR § 273.13) discuss standards for universal waste and states in part , "…. (d) *Lamps.* A small quantity generator of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows: (1) A small quantity generator of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such container must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions."

5. On September 14, 2009, based on the inspection and follow-up information, the Department issued Notice of Violation No. 2009-09-PRO-601 to Sampson for the violations described in C4 above.

6. On December 3, 2009, Department staff met with representatives of Sampson to discuss the violations. The Department asked Sampson to submit a written response to the NOV in order to memorialize their response to the violations.

7. On January 6, 2010, Sampson submitted a letter summarizing its responses to the NOV observations which were discussed in the December 3rd meeting. Sampson did not agree with several of the violations listed in the NOV, but agreed to perform corrective actions and modify its internal processes to prevent recurrence.

8. Based on the results of June 24 and 29, 2009 inspection, the December 3, 2009 meeting, and the documentation submitted on January 6, 2010, the Board concludes that Sampson has violated VHWMR and the Virginia Waste Management Act, as noted above.

9. On May 4, 2010, Sampson met with the Department and provided documentation showing that most of the compliance issues raised in the NOV have been addressed. In order for Sampson to return to compliance on the remaining issue, DEQ staff and representatives of Sampson 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 Sampson, and Sampson agrees to pay a civil charge of $17,500 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

Sampson shall include its Federal Employer Identification Number (FEIN) [(xx-xxxxxxx)] 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 Sampson for good cause shown by Sampson, 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, Sampson 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. Sampson 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. Sampson 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 Sampson 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. Sampson 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. Sampson shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Sampson 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 Sampson 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 Sampson.

11. This Order shall continue in effect until:

    a. Sampson 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 Sampson.

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

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, Sampson voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of August, 2010.

Michael P. Murphy, Regional Director
Department of Environmental Quality

Sampson Coatings, Inc. voluntarily agrees to the issuance of this Order.

Date: 6-18-10 By: James M Clarke Gen Mgr
(Person) (Title)
Sampson Coatings, Inc.

Commonwealth of Virginia
City/County of Henrico

The foregoing document was signed and acknowledged before me this 18th day of June, 2010, by James Michael Clarke who is General Manager of Sampson Coatings, Inc., on behalf of the corporation.

Notary Public

369257
Registration No.

My commission expires: 6/30/13

Notary seal:

OFFICIAL SEAL
NOTARY PUBLIC-COMMONWEALTH OF VIRGINIA
CASEY MICHAEL DRISCOLL
COUNTY OF HENRICO
ID# 369257
My Commission Expires
June 30, 2013