COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MR. MICHAEL WESTMORELAND EPA ID No. VAR000516047

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 Mr. Michael Westmoreland, 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. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.

2. "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.

3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

4. "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).

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

6. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled, as defined by 40 CFR § 260.10.

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

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

9. "Facility" or "Site" means Mr. Westmoreland's Facility, d.b.a. West Imports Metal Recyclers, located at 3681 Philpott Highway in Henry County, Virginia.

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

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

12. "Mr. Westmoreland" means the Mr. Michael Westmoreland, d.b.a. West Imports Metal Recyclers. Mr. Westmoreland is a "person" within the meaning of Va. Code § 10.1-1400.

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

14. "Order" means this document, also known as a Consent Order.

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

16. "Storage" means the holding of solid or hazardous waste for a temporary period, at the end of which the waste is treated, disposed of, or stored elsewhere, as defined by 40 CFR § 260.10 and 9 VAC 20-81-10, as applicable.

17. "Used oil", as defined at 40 CFR § 279.1, means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

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

19. "VAC" means the Virginia Administrative Code.

20. "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.

21. "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.

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. Westmoreland owns and operates West Imports Metal Recyclers, a facility that processes scrap metal for recycling at 3681 A.L. Philpott Highway in Henry County, Virginia. Operations at this site are subject to the Virginia Waste Management Act and the VHWMR.

2. The Facility is a CESQG of hazardous waste. Solid wastes generated at the Facility include used oil, used oil absorbent, mercury-containing switches, and lead-acid batteries. Mercury-containing switches may also be a hazardous waste – a D008 listed waste as described in 40 CFR § 261.24, and are also a universal waste as described in 40 CFR § 273.4. This hazardous waste is accumulated in containers at the Facility after its generation. Lead-acid batteries may also be a hazardous waste – a D009 listed waste as described in 40 CFR § 261.24, and are also a universal waste as described in 40 CFR § 273.2. This hazardous waste is accumulated in containers at the Facility after its generation.

3. On August 26, 2010 and January 21, 2011, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspections, Department staff made the following observations:

    a. There were releases of used oil that had not been remediated.

    b. Some of the containers used to store used oil were not labeled with the words "used oil."

    c. Some of the containers used to store used oil were not suitable for storage of oil and/or were not in good condition.

4. Pursuant to 40 CFR § 279.22(d), upon the release of used oil to the environment, a generator must perform the following cleanup steps: 1) stop the release, 2) contain the released used oil, 3) clean up and manage properly the released used oil and other materials, and 4) if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

5. 40 CFR § 279.22(c)(1) states that containers and above-ground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil".

6. 40 CFR § 279.22(a) states that used oil must be stored in appropriate containers.

7. On October 12, 2010, based on the August 26, 2010 inspection, the Department issued a Notice of Violation to Mr. Westmoreland for the violations described in paragraph C(3), above.

8. On February 23, 2011, based on the January 21, 2011, inspection, the Department issued a Notice of Violation to Mr. Westmoreland for the violations described in paragraph C(3), above.

9. On June 21, 2011, Department staff met with Mr. Westmoreland to discuss the violations.

10. Based on the violations described in Paragraph C(3) above, the Board concludes that Mr. Westmoreland has violated VHWMR, as noted above. More specifically, as noted above, the Board concludes that Mr. Westmoreland has violated 40 CFR § 279.22(d), 40 CFR § 279.22(c)(1), and 40 CFR § 279.22(a), as described in paragraph C(3), above.

11. DEQ staff inspected the Facility on June 21, 2011 and verified that the violations described in paragraphs C(3), 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 Mr. Westmoreland, and Mr. Westmoreland agrees to pay a civil charge of $1,287.00 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

Mr. Westmoreland shall include his Federal Employer Identification Number (FEIN) (54-1400430) 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 Mr. Westmoreland for good cause shown by Mr. Westmoreland, or on its own motion pursuant to the Administrative Process Act 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, Mr. Westmoreland admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Mr. Westmoreland 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. Mr. Westmoreland declares that he 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 Mr. Westmoreland 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. Mr. Westmoreland 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. Mr. Westmoreland shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on its part. Mr. Westmoreland 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 Mr. Westmoreland 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 Mr. Westmoreland. Nevertheless, Mr. Westmoreland 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 Mr. Westmoreland has completed all of the requirements of the Order; or

    b. Mr. Westmoreland petitions the Director or his designee to terminate the Order after he 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 Mr. Westmoreland.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Westmoreland 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 Mr. Westmoreland 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. 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.

14. By his signature below, Mr. Westmoreland voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of October, 2011.

Robert J. Weld, Regional Director
Department of Environmental Quality

Mr. Westmoreland voluntarily agrees to the issuance of this Order.

Date: Aug 25 2011 By: _____
Mr. Michael Westmoreland

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Commonwealth of Virginia
City/County of Henry

The foregoing document was signed and acknowledged before me this 29th day of August, 2011, by G. Michael Westmoreland.

Notary Public

340431
Registration No.

My commission expires: November 30, 2012

Notary seal:

Lisa S. Brown
Notary Public
Commonwealth of Virginia
Reg# 340431
My Commission Expires 11/30/12