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DEPARTMENT OF ENVIRONMENTAL QUALITY
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VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
WRIGHT BROTHER'S INC.
D.B.A. WRIGHT BROTHERS AUTO SALES AND GARAGE
EPA ID No. VACESQG71111

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 Wright Brother's, Inc., regarding Wright Brothers Auto Sales and Garage, 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 the Wright Brother's, Inc. facility, d.b.a. Wright Brothers Auto Sales and Garage, located at 233 North Coolwell Road in Amherst, 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. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

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

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

15. "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.

16. "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.

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. "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.

21. "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*

22. "WBI" means Wright Brother's, Inc., d.b.a. Wright Brothers Auto Sales and Garage, a company authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Wright Brother's, Inc. is a "person" within the meaning of Va. Code § 10.1-1400.

SECTION C: Findings of Fact and Conclusions of Law

1. WBI owns and operates Wright Brothers Auto Sales and Garage ("Wright Brothers"), a facility that does collision repair, painting, and light mechanical work on automobiles at 233 North Coolwell Road in Amherst, Virginia. Operations at this site are subject to the Virginia Waste Management Act, the VSWMR and the VHWMR. Mr. Ronnie Wright ("Mr. Wright") is an owner of WBI.

2. Wright Brothers is a CESQG of hazardous waste. Hazardous wastes generated at this facility include waste paint and spent solvent from cleaning paint guns, and waste gasoline mixed with water, all of which are ignitability characteristic wastes (D001) as described in 40 CFR § 261.21. The waste paint and spent solvent also potentially have EPA waste codes F003 and F005. Wright Brothers also generates waste paint booth filters (non-hazardous based on generator knowledge), used oil, used oil filters, waste tires, and other solid wastes.

3. On May 5 and June 6, 2011, 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. Hazardous waste determinations have not been made for the following solid wastes: the contents of five 55-gallon drums, the contents of a tank that was formerly used to store diesel fuel, and the contents of a 250-gallon tote container.

    b. There were multiple releases of used oil that have not been remediated. The spills and/or leaks appear to be in the immediate vicinity of the containers. Inspection results document a total of six releases at the following locations: near a 55-gallon drum, near a second 55-gallon drum, near a former diesel fuel storage tank,

by a 5-gallon bucket, next to two automobile transmissions stored on the ground, and in the parking lot.

c. None of the containers used to store used oil were labeled with the words "used oil."

d. There were more than 100 waste tires accumulated at the Facility.

e. There was miscellaneous solid waste accumulated at the Facility, including the wastes listed in Paragraph 3(a) above.

4. On October 17, 2011, Department staff performed a follow-up inspection at the Facility. Based on the inspection and follow-up information, Department staff made the following observations:

   Businesses, including CESQGs, may not dispose of hazardous waste at household hazardous waste pickup events. Statements made by Mr. Wright and documents provided by him during the inspection indicated that he had disposed of eight gallons of waste paint and four gallons of waste paint thinner at a household hazardous waste pickup day at the Region 2000 Concord Turnpike Solid Waste Landfill on July 11, 2011.

5. Pursuant to 40 CFR § 262.11, a person who generates a solid waste, as defined in 40 CFR § 261.2, must determine if that waste is a hazardous waste.

6. 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.

7. 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".

8. Va. Code § 10.1-1418.2(B) states that it is unlawful for any person to store, dispose of, speculatively accumulate or otherwise place more than 100 waste tires on public or private property without first having obtained a permit as required by Va. Code § 10.1-1408.1.

9. 9 VAC 20-81-40 states that: (A) No person shall operate any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste without a permit from the director. (B) No person shall allow waste to be disposed of or otherwise managed on his property except in accordance with this chapter. (C) It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner. (D) Any person who violates subsection A, B, or C of this section shall immediately cease the activity of

improper management and the treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, or closure in place.

10. 40 CFR § 261.5(g)(3) states that a CESQG must dispose of or ensure delivery of its waste at an authorized treatment, storage or disposal facility.

11. On July 10, 2011, based on the May 5 and June 6, 2011 inspections and follow-up information, the Department issued Notice of Violation No. 11-06-BRRO-L-001 to Mr. Wright for the violations described in paragraph C(3), above.

12. Representatives of DEQ and Mr. Wright met on October 17, 2011 after the follow-up inspection to discuss the NOV. Mr. Wright subsequently provided a bill of lading documenting delivery of waste gasoline and a used oil and water mixture to a permitted hazardous waste transporter. Mr. Wright also stated that he has disposed of two drums of non-hazardous dried waste paint at the Amherst County Solid Waste Landfill.

13. Based on the violations described in Paragraphs C(3) and C(4) above, the Board concludes that WBI has violated VHWMR, the VSWMR and the Virginia Waste Management Act, as noted above. More specifically, as noted above, the Board concludes that WBI has violated 40 CFR § 261.5(g)(3), 40 CFR § 262.11, 40 CFR § 279.22(d), 40 CFR § 279.22(c)(1), Va. Code § 10.1-1418.2(B), and 9 VAC 20-81-40 as described in paragraphs C(3) and C(4), above.

14. Mr. Wright has submitted documentation that verifies and DEQ staff inspected the Facility on October 17, 2011 and verified that the violations described in paragraphs C(3)(a) and C(3)(d), above, have been corrected.

15. In order for WBI to complete its return to compliance, DEQ staff and WBI 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 WBI, and WBI agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $2,600.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
June 1, 2014	$650.00 or balance
September 1, 2014	$650.00 or balance

December 1, 2014	$650.00 or balance
March 1, 2015	$650.00 or balance

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by WBI. Within 15 days of receipt of such letter, WBI shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

4. All payments 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

5. WBI 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 WBI for good cause shown by WBI, 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, WBI admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

    b. WBI 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 WBI.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve WBI 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 WBI 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 its signature below, WBI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14th day of May, 2014.

Robert J. Weld, Regional Director
Department of Environmental Quality

Wright Brother's, Inc. voluntarily agrees to the issuance of this Order.

Date: 3-29-14 By: Ronnie Wright
Mr. Ronnie Wright

Commonwealth of Virginia
City/County of Amherst

The foregoing document was signed and acknowledged before me this 4th day of April, by Ronnie L Wright, who is the owner of Wright Brother's, Inc.

Ashley Coffman
Notary Public

7263008
Registration No.

My commission expires: 03/31/2017

Notary seal:

ASHLEY D COFFMAN
NOTARY PUBLIC
REGISTRATION # 7263008
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
03/31/2017

APPENDIX A
SCHEDULE OF COMPLIANCE

Used Oil Container Labeling

1. By 30 days after the effective date of this Order, WBI shall label all used oil containers with the words "used oil" in accordance with 40 CFR § 279.22(c)(1).

2. By 45 days after the effective date of this Order, WBI shall submit photographs and documentary evidence demonstrating that the used oil containers at the Facility are labeled in accordance with 40 CFR § 279.22(c)(1).

Remediation of Petroleum Contaminated Soil

3. By 30 days after the effective date of this Order, WBI shall remove and properly dispose of all petroleum contaminated soil present at the Facility.

4. By 45 days after the effective date of this Order, WBI shall submit written documentation of proper disposal of the petroleum contaminated soil removed from the Facility.

Solid Waste Removal

5. By 30 days after the effective date of this Order, WBI shall remove and properly dispose of all solid waste present at the Facility, including a 250-gallon tote believed to contain waste hog feed and water and the contents of a tank formerly used to store diesel fuel now believed to contain a mixture of diesel fuel and water.

6. By 45 days after the effective date of this Order, WBI shall submit written documentation of proper disposal of the solid waste removed from the Facility.

Contact

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

Robert Steele
Enforcement Specialist Senior
VA DEQ –Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019

Phone: (540) 562-6777
Fax: (540) 562-6725
Email: Robert.Steele@deq.virginia.gov