



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

**West Central Regional Office**  
3019 Peters Creek Road, Roanoke, Virginia 24019  
Telephone (540) 562-6700, Fax (540) 562-6725  
www.deq.state.va.us

Robert G. Burnley  
Director

Steven A. Dietrich  
Regional Director

### COMMONWEALTH OF VIRGINIA WASTE MANAGEMENT BOARD

#### CONSENT ORDER ISSUED TO OFFICE OUTLET, INC.

#### Section A: Purpose

This is a consent order issued under the authority of §§ 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455 of the Code of Virginia (1950), as amended, by the Virginia Waste Management Board to Office Outlet, Inc. to resolve certain alleged violations of environmental laws and/or regulations at the Office Outlet, Inc. facility at 1827 Production Avenue in Roanoke, Virginia.

#### Section B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a consent order.
6. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* ("HWMR"). The specific provisions of Title 40 of the Code of Federal

Regulations ("CFR") cited herein are incorporated by reference at 9 VAC 20-60-260, 9 VAC 20-60-261, 9 VAC 20-60-262, 9 VAC 20-60-264, 9 VAC 20-60-265, 9 VAC 20-60-268, and 9 VAC 20-60-270.

7. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*
8. "Regional Office" means the West Central Regional Office of the Virginia Department of Environmental Quality, which is located at 3019 Peters Creek Road, Roanoke, Virginia 24019.
9. "Office Outlet" means Office Outlet, Inc., a Virginia Corporation

### **Section C: Findings of Fact and Conclusions of Law**

1. Office Outlet operates a facility for the storage and reconditioning of used office furniture at 1827 Production Avenue in Roanoke, Virginia ("the Facility"). Office Outlet performs furniture repair, stripping, refinishing, and reupholstering at the Facility.
2. On September 1, 2000, DEQ staff inspected the Facility. In a Warning Letter dated September 13, 2000, DEQ cited the following alleged violations that were documented during the inspection: a) failure to characterize solid wastes that may be hazardous wastes (40 CFR 261.5(g)(1)), and b) failure to obtain an EPA ID number (40 CFR 262.12). These alleged violations were cited again in a Notice of Violation issued to Office Outlet on December 18, 2000. In letters dated December 27, 2000 and January 19, 2001, Office Outlet stated that it made arrangements for removal of the waste by a contractor.
3. On September 13, 2003, DEQ inspected the Facility. During the inspection, DEQ staff observed approximately 124 55-gallon drums and 5-gallon pails at the site. Facility representatives stated that approximately 90 of the drums and pails contained spent solvents, finishes, or strippers. These spent materials included methylene chloride, methanol, xylene, ammonium hydroxide, and naphthalene. Approximately 16 of the 55-gallon drums contained spent solvents or finishes generated on-site. Approximately 26 of the 55-gallon drums and approximately 73 of the 5-gallon pails contained spent solvents or finishes generated off-site. Approximately two 55-gallon drums contained spent stripper. Less than one cubic yard of waste paint booth filters was stored at the site.
4. Because the Facility was not able to provide any documentation of proper waste disposal, the hazardous waste observed during the September 2000 inspection was apparently still present as of the September 2003 inspection.

5. The September 13, 2003 inspection results documented the presence of more than 1000 kilograms of hazardous waste at the Facility. Accordingly, under 40 CFR 261.5(g)(2), Office Outlet is subject to the Small Quantity Generator requirements at 40 CFR Part 262.
6. Because the Facility received hazardous waste from off-site and because hazardous waste was stored at the Facility for more than 180 days, the Facility is subject to the storage facility permit requirements at 40 CFR 264.
7. September 13, 2003 inspection results documented the failure by Office Outlet to comply with the following Small Quantity Generator operating requirements: accumulation time requirements at 40 CFR 262.34(d); container condition and inspection requirements at 40 CFR 262.34(d)(2); labeling requirements at 40 CFR 262.34(a)(2) & (3); emergency preparedness requirements at 40 CFR 262.34(d)(2) & (5). The inspection also documented the following violations of regulatory requirements relating to storage of hazardous waste: operation without a permit contrary to 40 CFR 270.1(c) and Code § 10.1-1426.A; failure to comply with general facility requirements at 40 CFR 264; storage of hazardous waste with high VOC content in open containers contrary to 40 CFR 264.1080; failure to obtain an EPA ID number as required by 40 CFR 262.12; failure to notify the Director of hazardous waste management activities contrary to 9 VAC 20-60-315.B & H; storage of land restricted wastes for more than a year without having met the requirements of Parts 262.34 and 264 as required by 40 CFR 268.50.
8. In a Notice of Violation dated September 18, 2003, the Department cited the violations alleged in Paragraphs 5 through 7 above:
9. In a follow-up site visit on October 8, 2003, Department staff observed that there was no evidence of any releases from any of the containers that contained hazardous waste.
10. On October 30, 2003, Office Outlet obtained provisional EPA ID number VAP000011391.
11. In a follow-up site visit on November 25, 2003, Department staff observed that Office Outlet had consolidated all hazardous waste that had been generated off-site into eight 55-gallon drums. Sixteen additional drums of material that had been generated on-site were also present. All of these drums were in good condition and there was no evidence of any releases.
12. As of December 10, 2003, Office Outlet had removed all remaining waste for proper disposal.
13. The initial civil charge calculated for the violations cited above was \$30,340. An Ability to Pay Analysis completed by DEQ staff on July 2, 2004 justifies the reduction of the civil charge to \$1,000.

**Section D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it pursuant to Code § 10.1-1455, orders Office Outlet and Office Outlet agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders Office Outlet and Office Outlet voluntarily agrees to pay a civil charge of \$1,000.00 within thirty (30) days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, VA 23240

The payment shall include Office Outlet's Federal Identification Number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

**Section E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Office Outlet, for good cause shown by Office Outlet, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations pertaining to the facility specifically identified herein. 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 as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Office Outlet admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Office Outlet consents to venue in the Circuit Court of the City of Roanoke for any civil action taken to enforce the terms of this Order.
5. Office Outlet declares that it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act, Code § 10.1-1400 *et seq.*, and waives the right to any hearing or other administrative proceeding

authorized or required by law or regulation, and to 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, or to judicial review of, any action taken by the Board or the Director to enforce this Order.

6. Failure by Office Outlet 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 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. Office Outlet 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, or other act of God, war, strike, or other such occurrences. Office Outlet must show that the circumstances resulting in the noncompliance were beyond its control and were not due to a lack of good faith or diligence on its part. Office Outlet shall notify the Director and the Director of the Department's West Central Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of 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 Director and the Director of the Department's West Central Regional Office within 24 hours of the commencement of the condition causing or anticipated to cause the delay or noncompliance shall constitute a waiver of any claim of 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

Office Outlet. Notwithstanding the foregoing, Office Outlet agrees to be bound by any compliance date that precedes the effective date of this Order.

11. This Order shall continue in effect until: a) Office Outlet 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 the Board terminates the Order in his or its sole discretion upon 30 days written notice to Office Outlet. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Office Outlet from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By the signature of an authorized official below, Office Outlet voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 13<sup>th</sup> day of DECEMBER, 2004.

Steven A. Dietrich  
for Robert G. Burnley, Director  
Department of Environmental Quality

Seen and Agreed to: [Signature]  
Office Outlet, Inc.

The foregoing instrument was acknowledged before me on NOVEMBER 5, 2004  
by John W. Hagen President, on behalf of Office Outlet, Inc.,  
(name) (title)

in the County/City of Roanoke, Commonwealth of Virginia.

Jocelyn Daperna Lewis  
Notary Public My Commission expires: 2/28/07

**APPENDIX A**

1. Not later than thirty days after the effective date of this Order, Office Outlet shall submit to the Department terminated manifests documenting proper disposal of all hazardous waste removed from the Facility during the year 2003.
2. Not later than thirty days after the effective date of this Order, Office Outlet shall submit a hazardous waste management plan ("Plan") to the Department. The Plan shall include a description of waste streams managed by Office Outlet and the operating procedures that Office Outlet will follow in order to comply with the Regulations. Specifically, the Plan shall include a description of how Office Outlet will comply on an ongoing basis with the applicable regulations, including limitations on the length of time for accumulation of hazardous waste and limitations on the quantity of waste to be stored at any given time.
3. Not later than thirty days after the effective date of this Order, Office Outlet shall obtain an EPA I.D. number in accordance with 40 CFR 262.12.