COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ASTRO PAK CORPORATION EPA ID No. VAD087337820

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 Astro Pak Corporation 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. "Astro Pak" means Astro Pak Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Astro Pak Corporation is a "person" within the meaning of Va. Code § 10.1-1400.

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

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

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

7. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

8. "EPA" means the U.S. Environmental Protection Agency.

9. "Facility" or "Site" means the metal parts precision cleaning facility located at 1624 Steel Street in Chesapeake, Virginia. The Facility is owned by Astro Pak Corporation.

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. "Treatment" means 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 as defined in CFR 260.10 and 9 VAC 20-60-260.

15. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

16. "RCRA Subtitle C" means Resource Conservation and Recovery Act Subtitle C, a federal program to manager hazardous waste from cradle to grave as described in 40 CFR Subtitle C,

17. "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.

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

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

20. "VAC" means the Virginia Administrative Code.

21. "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. Astro Pak owns and operates the Facility located at 1624 Steel Street in Chesapeake, Virginia.

2. Astro Pak submitted a RCRA Subtitle C Site Identification Form on August 18, 1980, that provided notice of regulated waste activity at the Facility as a non-notifier generator of hazardous waste and was issued EPA ID No. VAD087337820 for the Facility.

3. At the Facility, Astro Pak uses sodium hydroxide solution for cleaning metal parts. Waste sodium hydroxide solution is discharged to a permitted Hampton Roads Sanitation District ("HRSD") Publicly Owned Treatment Works as authorized by HRSD permit No. 0434.

4. On March 22, 2013, 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. On March 10, 2013, Astro Pak was performing a standard cleaning and treatment process using a sodium hydroxide solution in a 1500-gallon open top tank. Astro Pak added tap water to the tank with a 'garden' hose to produce a caustic sodium hydroxide solution with a pH of 13.
    b. Reportedly, on the evening of March 10, 2013, the hose was inadvertently left on; the tank had overflowed and had filled up the secondary containment area surrounding the tank culminating in an overflow of the secondary containment. The next morning, upon discovery, Astro Pak cleaned up a small (few gallons) spill

of the sodium hydroxide solution that had breached the secondary containment inside of the Facility building.

c. On March 16, 2013, an investigation by the City of Chesapeake Fire Marshall's Office staff, DEQ staff and Astro Pak staff revealed that there had been a second breach of the secondary containment that resulted in a discharge to and ultimately disposal of the sodium hydroxide solution in the perimeter ditch surrounding the Facility. A review of DEQ records indicates that Astro Pak has not been granted interim status nor has obtained a permit from DEQ or EPA for the land disposal of hazardous waste at the Facility.

d. In response, on March 16, 2013, Astro Pak hired IMS Environmental Services ("IMS") to respond to the spill of hazardous waste. IMS used citric acid and white vinegar in the perimeter ditch to neutralize the pH thus treating the hazardous waste. The perimeter ditch is not a wastewater treatment system regulated by the Clean Water Act nor did Astro Pak provide information that the hazardous waste met the Universal Treatment Standards prior to land disposal. A review of DEQ records indicates that Astro Pak had not been granted interim status nor has obtained a permit from DEQ or EPA for the treatment of hazardous waste at the Facility.

e. On March 21, 2013, IMS conducted follow-up pH sampling that confirmed that the perimeter ditch showed a neutral pH of 7. Astro Pak did not provide information at that time or sampling data to indicate whether the hazardous waste contained underlying hazardous constituents before land disposal.

5. 40 CFR 270.1(c) incorporated by 9 VAC 20-60-270 and Va. Code §10.1-1426(A) require that no person shall transport, store, provide treatment for, or dispose of hazardous waste without a permit from the Director.

6. 40 CFR 268.9(a) incorporated by 9 VAC 20-60-268 require that a generator of a hazardous waste determine each EPA hazardous waste code applicable to the waste in order to determine the applicable treatment standards and if a waste is determined to display a hazardous characteristic, the generator must determine the underlying hazardous constituents.

7. 40 CFR 268.40(e) incorporated by 9 VAC 20-60-268 require that all underlying hazardous constituents in characteristic hazardous wastes that are subject to treatment standards and not managed in a wastewater treatment system regulated by the Clean Water Act, to meet Universal Treatment Standards prior to land disposal.

8. On May 23, 2013, based on the March 22, 2013 inspection and follow-up information, the Department issued a Notice of Violation to Astro Pak for the violations described in paragraphs C(4) through C(7), above.

9. On June 18, 2013, Department staff met with Astro Pak representatives to discuss the violations noted in the NOV.

10. On July 11, 2013, Astro Pak submitted information that indicated that the sodium hydroxide solution had been in contact only with non-painted steel and therefore determined the hazardous waste discharged to the perimeter ditch did not contain any underlying hazardous constituents and was not subject to the Universal Treatment Standards in 40 CFR 268.48.

11. Based on the observations of the March 22, 2013 inspection, the June 18, 2013 meeting, and other information listed above, the Board concludes that Astro Pak has violated 40 CFR 270.1(c), 9 VAC 20-60-270, Va. Code § 1426(A), 40 CFR 268.9(a), 9 VAC 20-60-268 and 40 CFR 268.40(e), as described in paragraphs C(4) through C(7), above.

12. Astro Pak has submitted documentation that verifies that the violations in paragraps C(4) through C(7), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 10.1-1455, the Board orders Astro Pak and Astro Pak agrees to pay a civil charge of $18,025.00 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

Astro Pak 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 the Order with the consent of Astro Pak for good cause shown by Astro Pak, 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 and the Notice of Violation dated May 23, 2013. 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 the purposes of this Order and subsequent actions with respect to this Order only, Astro Pak admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.

4. Astro Pak 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. Astro Pak 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 Astro Pak 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. Astro Pak does not waive any rights or objections it may have in any enforcement actions by federal, other state or local authorities arising out of the same facts or facts similar to those recited in this Order.

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. Astro Pak 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. Astro Pak shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Astro Pak 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 TRO Regional Director within 24 hours and in writing within three business days, of learning of any condition above, which Astro Pak 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 Astro Pak. Nevertheless, Astro Pak 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 Astro Pak has completed all of the requirements of the Order;

b. Astro Pak 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 Astro Pak.

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

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 parties other than those expressed in this Order.

15. By its signature below, Astro Pak voluntarily agrees to the issuance of this Order.

And it is so ORDERED this_____ day of _____, 2014.

_____
Regional Director
Department of Environmental Quality

Astro Pak Corporation voluntarily agrees to the issuance of this Order.

Date: 12/19/13 By: _____, SVP
(Person) (Title)

State of CALIFORNIA
~~Commonwealth of Virginia~~
~~City~~/County of ORANGE

The foregoing document was signed and acknowledged before me this 19th day of December, 2013, by ERIK FRANKL who is SENIOR VICE PRESIDENT of Astro Pak Corporation on behalf of the company.

Notary Public

1902700
Registration No.

My commission expires: 9-3-14

Notary seal:

DEE-ANNA M. ROBBINS
COMM. #1902700
Notary Public - California
Orange County
My Comm. Expires Sep. 3, 2014