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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801
(540) 574-7800 Fax (540) 574-7878
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MARY BALDWIN COLLEGE
EPA ID No. VAR000011940

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 Mary Baldwin College, regarding the Mary Baldwin College facility 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. "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 20-81-10.

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

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

6. "Facility" or "Site" means the Mary Baldwin facility located at Frederick and New Street in Staunton, Virginia.

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

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

9. "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).

10. "Mary Baldwin" means Mary Baldwin College, a charitable, non-stock corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Mary Baldwin is a "person" within the meaning of Va. Code § 10.1-1400.

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

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

13. "RCRA" means the Resource Conservation and Recovery Act, enacted in 1976.

14. "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 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.

15. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).

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

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. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Mary Baldwin College (Mary Baldwin) owns and operates a residential college for women (Facility) located in Staunton, Virginia. During the time that the events cited in this Section took place, the Facility was classified as a Small Quantity Generator of hazardous waste in EPA's database. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. Mary Baldwin submitted a RCRA Subtitle C Site Identification Form, received September 22, 1998, that gave notice of regulated waste activity at the Facility as a generator of hazardous waste. Mary Baldwin was issued EPA ID No. VAR000011940 for the Facility. In a subsequent form, which was incomplete, received December 11, 2001, Mary Baldwin gave notice as a CESQG of hazardous waste and a Small Quantity Handler of universal waste at the Facility. Due to the incomplete nature of the December 11, 2001 submittal, the SQG designation in EPA's database remained.

3. At the Facility, Mary Baldwin generated the following solid wastes which are also hazardous wastes. Each waste is listed with associated waste codes as described in 40 CFR § 261.24 and 261.31. Hazardous wastes, including those listed below, are accumulated in containers at the Facility after generation.

   Allyl Bromide, propargyl bromide - D001
   Sulfuric acid, potassium hydroxide, trimethylamine, Mixed acids - D002
   Mercury, Mercuric Chloride - D009
   Ethanolamine/Acetone/Ethanol/Isopropyl Alcohol - D001, D002, F003
   Toluene/Cadmium - D006, F005
   Toluene/Selenium - D010, F005
   Mixed solvents/pigments (art dept) – D001
   Acrolein - P003
   Arsenic Acid - P010
   Potassium Cyanide - P098
   Strychnine - P108

   Mary Baldwin is a Small Quantity Handler of universal waste.

4. On December 8, 2014, DEQ staff conducted a compliance inspection of the Mary Baldwin facility in Staunton, Virginia. Staff also reviewed documents provided to DEQ during the course of the inspection. The following describe the staff's factual

observations and identify the applicable legal requirements:

a. On September 23, 2014, Mary Baldwin manifested 2 kg of the following P-Listed wastes and was not managing its waste as a Large Quantity Generator:

Sodium Cyanide (P106)	1 lb (0.45 kg)
Potassium Cyanide (P098)	1 lb (0.45 kg)
Acrolein (P003)	1.1 lb (0.50 kg)
Arsenic (P010)	0.11 lb (0.05 kg)
Strychnine (P108)	0.55 lb (0.55 kg)

40 CFR 261.5(e)(1) as referenced in 9 VAC 20-60-261 of the VHWMR states that if a generator generates acute hazardous waste in a total of one kilogram in a calendar month all quantities are subject to full regulation.

b. During the inspection it was observed that Mary Baldwin has generated LQG amounts of waste and has not paid an annual fee and has not notified DEQ.

9 VAC 20-60-1283(E) of the VHWMR requires that each episodic large quantity generator of hazardous waste shall be assessed an annual fee as shown in 9 VAC 20-60-1285 G to be paid in accordance with 9VAC 20-60-1280.

9 VAC 20-60-315(D) of the VHWMR requires that anyone who becomes a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record.

c. Universal Waste (lamps) located in the supply room were not stored in a closed container.

40 CFR 273.13(d)(1) as referenced in 9 VAC 20-60-273 of the VHWMR requires that containers and packages that contain Universal waste lamps must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

d. Waste lamps were not labeled with the words "Universal Waste".

40 CFR 273.14(e) as referenced in 9 VAC 20-60-273 of the VHWMR requires that the containers be labeled with the words "Universal Waste Lamps" or "Waste Lamps.

e. Waste lamps were not labeled with the date when they became a waste.

40 CFR 273.15(c) as referenced in 9 VAC 20-60-273 of the VHWMR requires that a small quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it

becomes a waste or is received.

5. On January 28, 2015, DEQ issued Notice of Violation (NOV) No. 15-1-VRO-007 to Mary Baldwin for the violations listed in paragraph 4, above.

6. On February 5, 2015, Mary Baldwin submitted a response to the NOV that included manifests to show all of the waste that was shipped to a hazardous waste disposal facility in 2014. Mary Baldwin provided packing lists to show that quantities of acute waste shipped were less than those cited in the NOV; however, total acute hazardous waste generated was still greater than 1 kg (2.2 lb).

7. On March 19, 2015, DEQ staff met with Facility representatives to discuss the NOV. Facility representatives stated that they thought they were a CESQG. DEQ staff stated that the facility had notified as an SQG in 1998 and had been inspected before as an SQG. Mary Baldwin subsequently submitted notification as a CESQG on March 31, 2015. At the Facility, Mary Baldwin generates the following wastes:

D001: Ignitable Waste
D002: Corrosive Waste
D003: Reactive Waste
D004: Arsenic
D009: Mercury
D011: Silver
F001: Spent halogenated solvents
F002: Spent halogenated solvents
F003: Spent non-halogenated solvents
F004: Spent non-halogenated solvents
F005: Spent non-halogenated solvents
P010: Arsenic acid
P030: Cyanides
P106: Sodium cyanide
U021: Benzidine
U080: Methylene chloride
U122: Formaldehyde
U209: Tetrachloro ethane
U239: Dimethyl benzene

8. Based on the results of the December 8, 2014 inspection and the March 19, 2015 meeting, the Board concludes that Mary Baldwin has violated 40 CFR 261.5(e)(1), 9 VAC 20-60-315(D), 9 VAC 20-60-262(B)(4), 9 VAC 20-60-1283(E), 40 CFR 273.13(d)(1), 40 CFR 273.14(e) and 40 CFR 273.15(c) as described in paragraph C(4), above.

9. Mary Baldwin has submitted documentation that verifies that the violations relating to universal waste described in paragraph C(4.d, 4.e and 4.f), above, have been corrected.

10. In Order to complete its return to compliance, DEQ staff and representatives of Mary Baldwin 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 Mary Baldwin, and Mary Baldwin agrees to:

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

2. Pay a civil charge of **$9,125.00** 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

Mary Baldwin shall include its Federal Employer Identification Number, 54-0506319, 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Mary Baldwin shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Mary Baldwin for good cause shown by Mary Baldwin, 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 in NOV No. 15-1-VRO-007 dated January 28, 2015. 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, Mary Baldwin admits 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. Mary Baldwin 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. Mary Baldwin 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 Mary Baldwin 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. Mary Baldwin 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Mary Baldwin shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mary Baldwin 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 parties intend 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 and any 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 Mary Baldwin. Nevertheless, Mary Baldwin 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 Mary Baldwin has completed all of the requirements of the Order;

b. Mary Baldwin 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 Mary Baldwin.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mary Baldwin 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 Mary Baldwin 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 Mary Baldwin certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Mary Baldwin to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Mary Baldwin.

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, Mary Baldwin voluntarily agrees to the issuance of this Order.

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And it is so ORDERED this _____ day of _____, 2015.

_____
Amy T. Owens, Regional Director
Department of Environmental Quality

Mary Baldwin College voluntarily agrees to the issuance of this Order.

Date: 6/18/15 By: Pamela Fox, _____
Dr. Pamela Fox President
Mary Baldwin College

Commonwealth of Virginia
City/County of City of Staunton

The foregoing document was signed and acknowledged before me this 18 day of June, 2015, by Pamela Fox who is President of Mary Baldwin College, on behalf of the corporation.

Sue B. Armstrong
Notary Public

7052046
Registration No.

My commission expires: My Commission Expires November 30, 2018

Notary seal:

SUE B. ARMSTRONG NOTARY PUBLIC MY COMMISSION NUMBER 7052046 COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Hazardous Waste Management Plan**

   Within 180 days of the effective date of this Order, Mary Baldwin shall submit a draft Hazardous Waste Management Plan to DEQ for review. This Plan shall include identification of key personnel and their responsibilities in the Facility's waste management program, minimization of waste, proper handling and storage of wastes, characterizing new wastes and employee training. Mary Baldwin shall submit the final Plan within 30 days of receiving comments from DEQ on the draft Plan.

2. **Training**

   Within 30 days of submission of the final Hazardous Waste Management Plan to DEQ, Mary Baldwin shall provide training to all affected Facility personnel on compliance with the Facility's Plan and the hazardous waste regulations. Within 10 days after the training, Mary Baldwin shall certify, in writing, to the Department that the training was provided to Facility personnel.

3. **LQG Notification**

   Within 30 days of the effective date of this Order, Mary Baldwin shall pay the LQG annual fee of $1,000.00 required by 9 VAC 20-60-1283 (E) for the year 2013. Payment shall be submitted to:

   Receipts Control
   Department of Environmental Quality
   Post Office Box 1104
   Richmond, Virginia 23218

4. **Contact**

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

   Karen Gail Hensley, P.E.
   Enforcement Team Leader
   VA DEQ –Valley Regional Office
   4411 Early Road
   P.O. Box 3000
   Harrisonburg, VA 22801
   (540) 574-7821 - phone
   (540) 574-7878 - fax
   karen.hensley@deq.virginia.gov