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 ENERGIZER HOLDINGS, INC. FOR SCHICK MANUFACTURING, INC. EPA ID No. VAD085124196

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 Energizer Holdings, Inc., regarding the Schick Manufacturing, Inc. 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

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

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

6. "Facility" or "Site" means the Schick Manufacturing, Inc. facility located at One Razor Blade Lane, Verona, VA 24482.

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

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

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

13. "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.

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

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

16. "VAC" means the Virginia Administrative Code.

17. "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.

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

SECTION C: Findings of Fact and Conclusions of Law

1. Energizer Holdings, Inc. owns and operates the Schick Manufacturing, Inc. facility (Facility) located at One Razor Blade Lane in Verona, Virginia. The Facility manufactures personal and industrial razor blade products. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. Energizer submitted a RCRA Subtitle C Site Identification Form, received December 28, 2010, that gave notice of regulated waste activity at the Facility as a generator of hazardous waste. Energizer became the owner of the Facility on December 23, 2010. Energizer was issued EPA ID No. VAD085124196 for the Facility. In subsequent forms, received February 20, 2012 and February 28, 2014, Energizer gave notice as an LQG of hazardous waste and a Small Quantity Handler of universal waste at the Facility.

3. At the Facility, Energizer generates Trichloroethylene still bottoms (TCE) which is a solid waste. TCE is also a hazardous waste –a F001 and D040 listed waste 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.

4. On April 30, 2014, DEQ staff conducted a compliance inspection of the Facility in Verona, 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. Review of facility records indicated that on December 17, 2013 Energizer generated about 275 gallons of Trichloroethylene waste in five, 55 gallon containers. This hazardous waste had been on site approximately 134 days on the inspection date. One 55 gallon container of the five containers was not dated with the accumulation start time. In a second hazardous waste accumulation area, just north of the previous area, there were seven 35 gallon drums of used Oakite (dirty acid) and three 55 gallon drums labeled as dirty acid. These drums were not labeled as hazardous waste or dated when accumulation began. Facility representatives stated that these drums were from a process that had ceased production on June 27, 2013, which was 307 days prior to the April 30, 2014 inspection. This material had not been characterized and the Facility has not been issued a permit for storage of hazardous waste.

        40 CFR 262.34(a) as referenced in 9 VAC 20-60-262 of the VHWMR states that a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit.

        40 CFR 262.11 as referenced in 9 VAC 20-60-262 of the VHWMR requires that a

person who generates a solid waste must determine if that waste is a hazardous waste.

40 CFR 262.34(a)(3) as referenced in 9 VAC 20-60-262 of the VHWMR requires that generators label each container with the words "Hazardous Waste" while being accumulated on-site.

40 CFR 262.34(a)(2) as referenced in 9 VAC 20-60-262 of the VHWMR requires that generators label each container with the date when accumulation begins, such that the date is clearly marked and visible for inspection.

b. Weekly container inspection forms could not be located.

40 CFR 265.174 as referenced in 9 VAC 20-60-265 of the VHWMR states that at least weekly, the owner or operator must inspect areas where containers are stored.

c. The contingency plan is listed under American Safety Razor and the Alternate Emergency Coordinator is no longer at the facility.

40 CFR 265.54 as referenced in 9 VAC 20-60-265 of the VHWMR requires that the contingency plan must be reviewed, and immediately amended, if necessary, whenever: C: the Facility changes – in its design, construction, or operation or other circumstance; or D: the list of emergency coordinators changes.

d. 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.

e. Waste lamp containers 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."

f. Waste lamp containers were not labeled with the date when lamps 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 June 11, 2014, DEQ issued Notice of Violation (NOV) No. 14-6-VRO-001 to Energizer Holdings, Inc. for the violations listed in paragraph C(4), above.

6. On June 20, 2014, Energizer submitted a response to the NOV that included manifests to show that all of the waste that was onsite during the April 30, 2014 inspection had been shipped to a hazardous waste disposal facility. Completed container inspection forms had been located and were submitted. The Contingency Plan had been updated and was submitted. Photos of properly stored and labeled universal waste containers, along with documented training for handlers of universal waste were submitted. This submittal resolved all of the violations cited in the NOV.

7. On June 26, 2014, DEQ staff met with Facility representatives to discuss the NOV. Facility representatives stated that Energizer had purchased American Safety Razor in 2010. They had undertaken a waste minimization study to reduce TCE onsite. The 275 gallons of TCE waste was generated from the cleaning of equipment previously part of the TCE degreaser system. The drums of Oakite 31 were generated from an experimental passivation process. Originally the Facility had hoped to reuse the Oakite and had not considered it a waste until about twenty days prior to the inspection, when it was relocated to the accumulation area.

8. Based on the results of the April 30, 2014 inspection and the June 26, 2014 meeting, the Board concludes that Energizer has violated 40 CFR 262.34(a), 40 CFR 262.11, 40 CFR 262.34(a)(3), 40 CFR 262.34(a)(2), 40 CFR 265.54, 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. Energizer has submitted documentation that verifies that the violations described in paragraph C(4), 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 Energizer, and Energizer agrees to:

1. Pay a civil charge of $30,087 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

Energizer shall include its Federal Employer Identification Number, 26-3324763, 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, Energizer 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 Energizer for good cause shown by Energizer, 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. 14-6-VRO-001 dated June 11, 2014. 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, Energizer admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

b. Energizer 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 Energizer.

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

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, Energizer voluntarily agrees to the issuance of this Order.

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

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

----------(Remainder of Page Intentionally Blank)----------

Energizer Holdings, Inc. voluntarily agrees to the issuance of this Order.

Date: August 13, 2014 By: Lisa A. Funderburg, _____
Lisa A. Funderburg Chief EH&S Counsel
Energizer Holdings, Inc.

State of Missouri
~~Commonwealth of Virginia~~
~~City~~/County of St. Louis

The foregoing document was signed and acknowledged before me this 13th day of August, 2014, by Lisa A. Funderburg who is Chief Environmental Health + Safety Counsel of Energizer Holdings, Inc., on behalf of the company.

Melissa A. Nazzoli
Notary Public

#12410086
Registration No.

My commission expires: Sept. 12, 2016

Notary seal:

MELISSA A. NAZZOLI
Notary Public-Notary Seal
State of Missouri, St Louis County
Commission # 12410086
My Commission Expires Sep 12, 2016