COMMONWEALTH of VIRGINIA

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO INDUSTRIAL MACHINE WORKS, INCORPORATED FOR INDUSTRIAL MACHINE WORKS EPA ID No. VAD 003 128 915

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 Industrial Machine Works, Incorporated, regarding the Industrial Machine Works, 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. "Facility" or "Site" means the Industrial Machine Works' Facility located at 444 North Bayard Avenue in Waynesboro, Virginia.

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

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

8. "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).

9. "IMW" means Industrial Machine Works, Incorporated, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. IMW is a "person" within the meaning of Va. Code § 10.1-1400.

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. "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 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.

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

14. "SQG" means 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).

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

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

17. "VAC" means the Virginia Administrative Code.

18. "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. IMW owns and operates the Facility in Waynesboro, Virginia, The Facility operates a metals machining, fabrication, plating and finishing plant. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. IMW submitted a RCRA Subtitle C Site Identification Form (8700-12) that gave notice of regulated waste activity at the Facility. IMW was issued EPA ID No. VAD 003 128 915 for the Facility.

3. At the Facility, IMW generates waste solids in the form of spent metal plating solutions, which contain calcium hydroxide, nickel chloride, sodium hydroxide, chrome, and nitric acid. These compounds are Hazardous Waste Solids and D002 and D007 listed waste as described in 40 CFR § 262.21 and 40 CFR § 262.31. This Hazardous Waste is accumulated in containers (i.e. 55-gallon drums) at the Facility after its generation.

4. On August 3, 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. IMW generated and accumulated 1,045 gallons, or approximately 8,721 kilograms, of hazardous waste during the month of December 2007 and is classified as a non–generator of hazardous waste in EPA's database. The majority of this hazardous waste was observed on site during the inspection.
    b. The Facility accumulated LQG amounts of hazardous waste and has not paid an annual fee and has not notified DEQ of this occurrence.
    c. Containers in the accumulation area that had hazardous waste in them were not properly marked with the words "Hazardous Waste" and were not dated with the time accumulation had begun.
    d. The drums used to collect hazardous waste in containers at or near the point of generation (satellite areas) were not clearly marked with the words "Hazardous Waste" or other words to identify the contents of the container.
    e. Facility personnel did not inspect the hazardous waste accumulation areas on a weekly basis.

5. 40 CFR 262.12(a) as referenced in 9 VAC 20-60-262 of the VHWMR requires that a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the administrator.

6. 9 VAC 20-60-315(D) of the VHWMR requires that anyone who becomes a LQG shall notify the department in writing immediately of this change in status and document the change in the operating record. 9 VAC 20-60-1283(B) of the VHWMR requires that each LQG 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.

7. 40 CFR 262.34(a)(2) & (3) as referenced in 9 VAC 20-60-262 of the VHWMR requires that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container and that each container be labeled with the words "Hazardous Waste".

8. 40 CFR 262.34(c)(1)(ii) as referenced in 9 VAC 20-60-262 of the VHWMR requires that generators mark containers at or near the point of generation with the words " Hazardous Waste."

9. 40 CFR 265.174 as required by 40 CFR 262.34 (a)(4) and as referenced in 9 VAC 20-60-262 and 265 of the VHWMR requires that at least weekly, the owner or operator inspects areas where containers of Hazardous Waste are stored.

10. On October 28, 2011, based on the inspection and file documentation, DEQ issued Notice of Violation # WS-11-10-VRO-001 to IMW for the violations described in paragraphs C(4) through (9), above.

11. On December 13, 2011, DEQ staff met with IMW representatives regarding the violations cited in the NOV and received the following explanations:

    a. IMW confirmed the amount of hazardous waste that was noted during the inspection, stating that it was spent plating solution that was speculatively accumulated for reuse during 2004 and 2005 by a former employee. After this employee left, IMW re-evaluated the spent plating solution and determined that it was outdated and beyond reclamation for reuse. All 8,721 kilograms (kg) were then considered hazardous waste and purportedly 1,000 kg were disposed of every month. This was done to evenly distribute smaller disposal costs throughout the year. Regardless, the amount of hazardous waste generated during December 2007 exceeded SQG limits and resulted in an episodic LQG event. As of the meeting date, all hazardous waste had been collected and disposed of offsite.
    b. IMW had not submitted a notification (Form 8700-12) or the fee associated with their LQG status. They agreed to submit both. (DEQ received a completed and signed Form 8700-12 on December 16, 2011).
    c. IMW generates its hazardous waste sporadically, basically every time the plating/coating solution in a given tank fails or needs replacement. So, since all hazardous wastes have been disposed of, IMW does not currently have any hazardous waste containers to label or inspect in either the satellite accumulation area or the central accumulation area. This effectively resolves the violations noted in paragraphs C.4.c., d. and e.

12. On December 16, 2011, DEQ staff received two completed and signed Forms 8700-12, the first listing IMW as an episodic LQG during December 2007, and the second listing it currently as an SQG.

13. Based on the results of August 3, 2011, inspection and the documentation submitted on December 13 and 16, 2011, the Board concludes that IMW has violated 40 CFR 262.12(a), 9 VAC 20-60-315(D), 40 CFR 262.34(a)(2) & (3), 40 CFR 262.34(c)(1)(ii), 40 CFR 265.174 and 9 VAC 20-60-262, as described in paragraphs C(3) through C(9), above.

14. In order for IMW to complete its return to compliance, DEQ staff and representatives of IMW 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 IMW, and IMW agrees to:

1. Submit the one thousand dollar ($1,000.00) annual LQG fee by April 30, 2012; and,

2. Pay a civil charge of $13,194.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Both 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

IMW shall include its Federal Employer Identification Number (FEIN) 54-0485782 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 IMW for good cause shown by IMW, 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. 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, IMW admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. IMW 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. IMW 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 IMW 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. IMW 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. IMW shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. IMW 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 IMW 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 IMW.

11. This Order shall continue in effect until:

    a. IMW 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 Board terminates the Order in his or its sole discretion upon 30 days' written notice to IMW.

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

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, IMW voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2012.

_____
Amy Thatcher Owens, Regional Director
Department of Environmental Quality

Industrial Machine Works, Inc. voluntarily agrees to the issuance of this Order.

Date: 3/23/2012 By: Douglas Bosserman, Sec + Treas
(Person) (Title)
Industrial Machine Works, Inc.

Commonwealth of Virginia

City/County of Waynesboro

The foregoing document was signed and acknowledged before me this 23rd day of March, 2012, by Douglas Bosserman who is Secretary/Treasurer of Industrial Machine Works, Inc., on behalf of the corporation.

Deborah Wells
Notary Public

331888
Registration No.

My commission expires: 12/31/2012

Notary seal:

DEBORAH P WELLS
NOTARY PUBLIC
REGISTRATION # 331888
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
DECEMBER 31, 2012

DEQ-VALLEY
MAR 26 2012
TO:
FILE: