COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

CITY OF VIRGINIA BEACH (EPA ID Number VAD988200424)

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§10.1-1182 *et seq.*, 10.1-1402, 10.1-1405, and 10.1-1455 between the Virginia Waste Management Board and the City of Virginia Beach for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

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

1. "Va. 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 Va. 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 Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality.

5. "Landstown Yard" means the Landstown Public Works Center, the operations center for the Public Works division of the City of Virginia Beach.

6. "City" means the City of Virginia Beach.

7. "Order" means this document, also known as a Consent Order.

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

9. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* ("VHWMR"). The Regulations at 9 VAC 20-60-124, 260-266, -268, -270, -273, and –279 adopt by reference certain provisions of Title 40 of the Code of Federal Regulations ("CFR").

SECTION C: Findings of Fact and Conclusions of Law

1. The City of Virginia Beach owns and operates the Landstown Yard with the listed address of 3556 Dam Neck Road, Virginia Beach, Virginia.

2. Landstown Yard is listed by the Environmental Protection Agency as a small quantity generator ("SQG") of hazardous wastes. Facilities listed as SQG of hazardous waste are defined as greater than 220 pounds and less than 2,200 pounds total hazardous waste generated per month, on average. From Landstown Yard records, hazardous waste received is generated from traffic and street maintenance operations. These wastes include screen printing cleaning solvent, waste flammable liquids, corrosive liquids and waste water reactive solids.

3. On May 4, 2007, DEQ received an Environmental Incident Report from the Southeastern Public Service Authority ("SPSA") for an incident that occurred at the SPSA Oceana Solid Waste Transfer Station on May 3, 2007. Reportedly, SPSA staff observed smoke from a 2-gallon container containing a liquid that was off-loaded by City staff. Testing done by SPSA staff revealed that the liquid was a strong acid with a pH of less than 1.0 and thus a hazardous waste characteristic for corrosivity. City staff were called and requested to remove the material by the SPSA Transfer Station personnel in order to allow the transfer station to resume operations. City staff subsequently transported the hazardous waste to the Landstown Yard.

4. On May 8, 2007, DEQ staff conducted a compliance inspection at Landstown Yard. A review of the City's records revealed that Landstown Yard had seven shipments of hazardous waste from 2004 though 2007. At the time of the inspection, the City was able to provide only three hazardous waste manifests and one land disposal restriction notice for the seven shipments. Furthermore, the City was not able to provide a confirmation of delivery for hazardous waste manifest #001240145 dated November 16, 2006 and did not submit an exception report for the missing confirmation to DEQ. Additionally, an inspection of the hazardous waste storage area found a lead-acid battery that was stored on the floor in poor condition, cracked, and part of the top missing, exposing the lead-acid cell. Also, a 55-gallon over-packed drum containing the hazardous waste

acid that had been picked up from the Oceana Transfer Station on May 3, 2007 was not dated, marked or labeled as hazardous waste.

5. 9 VAC 20-60-420.E of the Regulations requires that all transporters of hazardous waste shipments originating in Virginia obtain a permit from the Director. A review of DEQ files did not show that a Virginia Hazardous Waste Transporter Permit was issued to the City. The City violated the Regulations by transporting hazardous waste from the SPSA Oceana Transfer Station to the Landstown Yard without a permit.

6. 40 CFR 262.40(a) and 40 CFR 262.44(a), as adopted by reference in 9 VAC 20-60-262 of the Regulations require that a generator must keep a copy of each manifest for three years or until a signed copy is received from the receiving facility and then the signed copy must be retained for three years. Additionally, 40 CFR 268.7(a)(8), as adopted by reference in 9 VAC 20-60-268, generators must retain a copy of all notices, certifications, wastes analysis data, and other documentation produced for at least three years from the date that the waste is subject to the documentation was sent to on-site or off-site treatment, storage, etc. The City violated the Regulations by failing to provide four hazardous waste manifests and six land disposal restriction notices from seven total shipments of hazardous waste from the Landstown Yard during 2004 to 2007.

7. 9 VAC 20-60-262 and 40 CFR 262.42(b) require that a SQG submit an exception report when the SQG does not receive a confirmation of delivery for hazardous waste manifests within 60 days of when the waste was accepted at the designated facility. The City violated the Regulations by failing to provide a confirmation copy of manifest #001240145 with the hand written signature of the owner or operator of the designated facility or submitting an exception report to DEQ regarding the missing confirmation copy of the manifest.

8. 9 VAC 20-60-265, 40 CFR 265.173(a) and 40 CFR 265.173(b) require that a hazardous waste container that is not in good condition must be transferred to a container in good condition and that containers that hold hazardous waste must not be opened, handled or stored in a manner which may rupture the container. The City violated the Regulations by failing to store a lead-acid battery in a container in good condition. The battery was stored on the floor, cracked and part of the top missing, exposing the lead-acid cell.

9. 9 VAC 20-60-262, 40 CFR 262.34(a)(2) and 40 CFR 262.34(a)(3) require that each container containing hazardous waste must be labeled visibly with the date upon each period of accumulation began and with the words "Hazardous Waste". The City violated the Regulations by failing to label the hazardous waste acid picked up from the SPSA Transfer Station on May 3, 2007 with the date that the accumulation period began or with the words "Hazardous Waste".

10. DEQ advised the City of the above referenced findings by Notice of Violation dated July 5, 2007.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders the City, and the City voluntarily agrees, to pay a civil charge of $5,500.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," and shall be sent to:

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

   Either on a transmittal letter or as a notation on the check, the City shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for the City.

2. Within thirty (30) days of the effective date of this Order, the City shall provide to DEQ, for review and approval, an approvable corrective action plan that addresses deficiencies referenced in this Order that were observed during DEQ's May 8, 2007 compliance inspection of the Landstown Yard. Upon DEQ approval of the corrective action plan, the corrective action plan shall become a requirement of and enforceable under the terms of this Order.

3. Within 30 days of DEQ approval of the corrective action plan, the City shall implement the plan.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the City for good cause shown by the City or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those alleged violations specifically identified herein, including those matters addressed in the Notice of Violation issued to the City by DEQ on July 5, 2007. 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 Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For the purposes of this Order and subsequent actions with respect to this Order, the City admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. The City 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. The City declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 enforce this Order.

6. Failure by the City 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. The City 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. The City shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The City shall notify the TRO Regional Director in writing 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 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, 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 the City. Notwithstanding the foregoing, the City agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the City. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the City from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, the City of Virginia Beach voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____day of _____, 2007.

_____
Francis L. Daniel

The City of Virginia Beach voluntarily agrees to the issuance of this Order.

By: _____

Date: 24 Oct 07

Gwen Hodges Frasier, MMC, City Clerk

Commonwealth of Virginia
City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 24 day of October (month), 2007, by Charles W. Meyer (name), who is Chief Operating Officer (title) of the City of Virginia Beach, on behalf of the City of Virginia Beach.

Angela Harrow
Notary Public

My commission expires: My Commission Expires August 31, 2010

Notary # 7032691

ANGELA CARROLL HARROW NOTARY PUBLIC MY COMMISSION NUMBER 7032691 COMMONWEALTH OF VIRGINIA