COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ESSEL PROPACK AMERICA LLC FOR ESSEL PROPACK GRAPHICS EPA ID No. VAR000517474

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 Essel Propack America LLC, regarding the Essel Propack Graphics 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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

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 20-80-120(A).

4. "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. "Essel Propack" means Essel Propack America LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Essel Propack is a "person" within the meaning of Va. Code § 10.1-1400.

8. "Facility" or "Site" means the Essel Propack American LLC Facility located at 203 Stinson Drive in Danville, Virginia.

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

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

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. "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.

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

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. "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.

19. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

SECTION C: Findings of Fact and Conclusions of Law

1. Essel Propack owns and operates the Facility in Danville, Virginia. The Facility manufactures unlaminated plastics profile shapes. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. Essel Propack submitted a RCRA Subtitle C Site Identification Form, received May 15, 2009 that gave notice of regulated waste activity at the Facility as a SQG of hazardous waste. Essel Propack was issued EPA ID No. VAR000517474 for the Facility.

3. At the Facility, Essel Propack generates waste ink and solvents from the printing press cleaning and spent fluorescent lamps which are solid wastes. The waste ink and solvents and the spent fluorescent lamps are also hazardous wastes with waste codes of D001 and D035. The hazardous wastes are accumulated in containers at the Facility after generation.

4. On February 24, 2010, 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.

5. There were 12 drums of hazardous waste ink and solvent in the < 180-day accumulation area at the Facility. None of the drums were labeled with the accumulation start date or the words "Hazardous waste". 40 CFR 262.34 (d)(4), states that a small quantity generator may accumulate hazardous waste on-site for 180 days or less without a permit provide that the generator complies with the requirements of paragraphs (a)(2) and (a)(3) of 40 CFR § 262.34. Paragraph (a)(2) states that "the date upon which each period of accumulation begins is to be clearly marked and visible for inspection on each container. Paragraph (a)(3) states that while being accumulated on-site, each container must be labeled with the words, "Hazardous Waste.""

6. The two 3-gallon satellite accumulation containers located in the press room were not labeled with the words, "Hazardous Waste," or other words identifying their contents. 40 CFR § 262.34(c)(1)(ii), states that a generator may accumulate 55 gallons of hazardous waste at a satellite accumulation point as long as he marks his containers either with the words, "Hazardous Waste," or with other words that identify the contents of the containers.

7. The facility was not performing weekly inspections of its containers of hazardous waste in its <180-day storage area. 40 CFR §262.34(d)(2) requires that a small quantity generator may accumulate hazardous waste on-site for 180 days or less without a permit provided that the generator complies with the requirements of subpart I of 40 CFR 265, except for 265.176 and 265.178. 40 CFR § 265.174 states that the owner or operator

must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors.

8. The facility did not have the copy of the hazardous waste manifest for the shipment on June 8, 2009 that was complete with the signature of the disposal facility representative certifying that the waste was received. 40 CFR § 262.44, which references 40 CFR 262.40(a), requires that a generator must keep a copy of each manifest signed in accordance with 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

9. The spent fluorescent lamps in accumulation at the Facility were not labeled with any one of the following phrases: "Universal Waste – Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)". 40 CFR § 273.14 (e) requires that each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste – Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

10. There were a large number of 4 ft. and 8 ft. spent fluorescent lamps being accumulated in a trash can. The lamps were not being accumulated in a package that was closed and structurally sound such as to protect the lamps from being broken. 40 CFR § 273.13 (d)(1) states that a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

11. On April 1, 2010, based on the inspection and follow-up information, the Department issued Notice of Violation No. 10-03-BRRO-L-003 to the Essel Propack for the violations described in paragraphs C(5) through C(10), above.

12. On April 13, 2010, Essel Propack responded to the NOV via phone.

13. Based on the results of February 24, 2010 inspection, the Board concludes that Essel Propack has violated 40 CFR 262.34 (d)(4), 40 CFR 262.34(c)(1)(ii), Subpart I of 40 CFR 265, 40 CFR 262.44, which references 40 CFR 262.40(a), 40 CFR 273.14 (e), and 40 CFR 273.13 (d)(1)as described in paragraphs C(5) through C(10), above.

14. Essel Propack has submitted documentation that verifies that the violations described in paragraphs C(5) through C(10), 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 Essel Propack, and Essel Propack agrees to:

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

2. Pay a civil charge of $19,110 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

Essel Propack shall include its Federal Employer Identification Number (FEIN) 14-1838973 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 Essel Propack for good cause shown by Essel Propack, 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, Essel Propack admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

11. This Order shall continue in effect until:

a. Essel Propack 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 Essel Propack.

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

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, Essel Propack voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Robert J. Weld, Regional Director
Department of Environmental Quality

Essel Propack America LLC voluntarily agrees to the issuance of this Order.

Date: 6/30/2010 By: _____, Regional Vice President
Ted Sojourner
Essel Propack America LLC

Commonwealth of Virginia
City/~~County~~ of Danville

The foregoing document was signed and acknowledged before me this 30th day of June, 2010, by Ted Sojourner who is Regional Vice President of Essel Propack America LLC, on behalf of the company.

_____
Notary Public

350953
Registration No.

My commission expires: April 30, 2012

Notary seal:

TIFFANY A. HARRIS
COMMONWEALTH
REGISTRATION NO.
350953
MY COMMISSION EXPIRES
04/30/2012
OF VIRGINIA
NOTARY PUBLIC

APPENDIX A
SCHEDULE OF COMPLIANCE

Essel Propack shall:

1. No later than August 31, 2010, provide training to employees responsible for the management of hazardous waste at the Facility. The training shall familiarize the employees with proper hazardous waste management and emergency procedures. The training shall be relevant to the employees' responsibilities during normal facility operations and emergencies.

2. No later than September 15, 2010, submit documentation to the Department that Item 1 of this Appendix has been completed.

3. Submit all requirements of Appendix A of this Order to:

Jerry Ford, Jr.
Enforcement Specialist – Senior
VADEQ – Blue Regional Office
3019 Peters Creek Road
Roanoke, VA 24019
540/562-6817
540/562-6725
Jerry.Ford@deq.virginia.gov