COMMONWEALTH of VIRGINIA

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VIRGINIA WASTE MANAGEMENT BOARD
Special Order by Consent
ISSUED TO
J&P Keegan, LP
FOR
Battery Brooke Parkway Facility

SECTION A: Purpose

This is a Special Order issued under the authority of Va. Code § 10.1-1-1402(19), (21), between the Virginia Waste Management Board and J&P Keegan, LP, regarding the Battery Brooke Parkway facility for the purpose of requiring cleanup and abatement due to a release of hazardous substances at the facility.

SECTION B: Definitions

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

1. "Bank of America" means "Bank of America, National Association, Inc." Bank of America, National Association, Inc. is a "person" within the meaning of Va. Code § 10.1-1400.

2. "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.

3. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act. Codified at 42 U.S.C.

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. "EPA" means the United States Environmental Protection Agency.

7. "Facility" means the property located 1301 Battery Brooke in Chesterfield County, Virginia, which is owned J&P Keegan, LP and consists of approximately 24.174 acres as recorded at Plat Book 102, Plat Page 52 in the Clerk's Office of the Circuit Court of Chesterfield County.

8. "Hazardous substance" means a substance listed under United States Public Law 96-510, entitled the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA").

9. "J&P Keegan" means "J&P Keegan, LP" a limited partnership, and its affiliates, managing partner, subsidiaries and parents. J&P Keegan is a "person" within the meaning of Va. Code § 10.1-1400.

10. "Order" means this document, also known as a "Special Order."

11. "Pinchal" means "Pinchal & Company, LLC" which is the managing partner of J&P Keegan LLP. Pinchal & Company is a "person" within the meaning of Va. Code § 10.1-1400.

12. "Rehrig" means "Rehrig International, Inc." and its successor, "Rehrig-United International Incorporated." Rehrig International, Inc. and Rehrig-United International Incorporated are 'persons" within the meaning of Va. Code § 10.1-1400.

13. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code.

14. "Warehouse" means the existing 317,319 square-foot warehouse and manufacturing plant structure on the Facility property that Rehrig operated in.

SECTION C: Findings of Fact and Conclusions of Law

1. Rehrig operated at the Facility for the purpose of manufacturing shopping carts and shopping baskets. Operations at the Facility included electroplating inside the Warehouse. Rehrig had identified as a large quantity generator of hazardous waste under the Resource Conservation and Recovery Act ("RCRA"). Rehrig identified as generating F006 listed hazardous waste which is listed at 40 CFR § 261.24. The hazardous constituents serving the basis of a F006 listing are cadmium, hexavalent chromium, nickel, and cyanide (complexed) as noted in Appendix VII to Part 261 of 40 CFR.

2. Rehrig leased the facility from J&P Keegan to conduct operations between the years 2001 and 2008.

3. J&P Keegan is the owner of the Facility.

4. On September 5, 2008 Rehrig filed a petition for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court").

5. On December 23, 2008, the Bankruptcy Court granted Rehrig's motion to convert the Chapter 11 bankruptcy to a Chapter 7 bankruptcy under the Bankruptcy Code.

6. On December 23, 2008, Bank of America, as a senior creditor under the bankruptcy, ordered that Rehrig shut down operations at the Warehouse. Bank of America then took control of the assets at the Warehouse and took possession of the Warehouse under the pre-existing lease with J&P Keegan.

7. On January 7, 2009, Chesterfield County Fire and Emergency Services responded to a release of water from the Warehouse.

8. Chesterfield County Emergency Services established a Unified Command which included several governmental agencies including EPA and DEQ.

9. On January 8, 2009, EPA conducted sampling at the Warehouse. Surface water analysis showed levels of chromium as high as 14.3 micrograms per liter (μg/l) and nickel levels as high as 27.3 μg/l. Soil analysis reveled chromium levels of 12.3 milligrams per kilogram (mg/kg) and nickel levels of 10.9 mg/kg.

10. Chromium and nickel are hazardous substances. Both are designated as hazardous substances at 40 CFR § 302.4 under CERCLA.

11. On January 8, 2009, EPA discovered that an unknown substance had spread in the area of the Warehouse where plating had occurred. Sampling of this substance revealed chromium levels as high as 709,000 μg/l and nickel levels as high as 707,000 μg/l.

12. On January 28, 2009, DEQ received an updated RCRA Subtitle C Site Identification form for the Facility identifying J&P Keegan as the owner and operator. The form identified that F006 listed hazardous wastes were handled on-site. The form also identified that hazardous waste with the ignitability characteristic (D001) and corrosive characteristic (D002) were managed on-site.

13. Bank of America maintained possession of the Warehouse until March 31, 2009 by taking possession under the terms of the lease between Rehrig and J&P Keegan. On April 1, 2009, J&P Keegan took possession of the Warehouse from Bank of America.

14. On April 2, 2009, a meeting was held among governmental agencies including EPA and DEQ and representatives of J&P Keegan at the Facility to discuss further actions.

15. On April 2, 2009, EPA and DEQ conducted a walk-through of the Warehouse and noted additional leakage in the area where plating had occurred.

16. On July 23, 2009, EPA and J&P Keegan entered into Administrative Settlement Agreement and Order on Consent for a CERCLA Removal Response Action for the Facility ("EPA Consent Order"). The EPA Consent Order determined that hazardous substances were present at the Facility and that the "past, present, and/or potential migration of hazardous substances from the [Facility] constitutes an actual and/or threatened 'release'" under CERCLA.

17. Under the EPA Order, J&P Keegan voluntarily agreed to remove the plating vats where electroplating had occurred inside the Warehouse and to remove the wastewater treatment system, all of which were located in the Warehouse where the release had occurred.

18. EPA established a Unified Command at the Facility and employed TetraTech EM, Inc. to oversee the removal action at the Facility.

19. Under the EPA Order, J&P Keegan, through its contractor, Draper Aden, submitted weekly progress reports for activities at the Facility. J&P Keegan, EPA, DEQ, and other governmental agencies attended regularly scheduled EPA Unified Command meetings.

20. J&P Keegan through Draper Aden submitted analysis of soil and sediment sampling in the concrete floor in the Warehouse where plating had occurred. Results of this sampling showed concentrations exceeding background levels at the Facility for chromium and nickel.

21. In December 2009, Draper Aden submitted a Response Action Final Report to EPA and a Post-Removal Site Assessment on behalf of J&P Keegan. Samples from beneath the Warehouse floor in the plating room contained concentrations of chromium and nickel above background concentrations and EPA screening levels for soil for these constituents. Some of the samples taken outside the Warehouse and off-site showed nickel at levels above background but below EPA screening levels for nickel. One sample taken on-site outside the Warehouse showed chromium above background but below EPA screening levels for chromium.

22. On January 14, 2010, representatives from J&P Keegan, Draper Aden, EPA, and DEQ met to discuss remediation at the site. The meeting resulted in a determination that items included in the Schedule of Compliance of this Order are necessary to address any contamination at

the Facility and beyond the Facility boundary resulting from the release of hazardous substances at the Facility.

23. Based on the information contained in paragraphs C(1)-C(22), the Board concludes that a release of hazardous substances has occurred at the Facility and that hazardous substances are substances within the jurisdiction of the Board. The Board concludes that such release occurred due to improper management and storage of hazardous substances during Rehrig's or Bank of America's leasehold possession of the Facility. The Board further concludes that because of such release, clean-up of the release should occur and that remediation should occur to abate any nuisance or hazard created by the release. The Board concludes and J&P Keegan agrees that clean-up is best achieved through this Order in lieu of any other regulatory or Departmental programs.

24. In order for J&P Keegan to ensure clean-up at the Facility, DEQ staff and representatives of J&P Keegan 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 pursuant to Va. Code §§ 10.1-1402(19), (21), the Board orders J&P Keegan, and J&P Keegan agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of J&P Keegan for good cause shown by J&P Keegan, 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 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 (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, J&P Keegan admits the jurisdictional allegations, but neither admits nor denies the findings of fact and conclusions of law contained herein.

4. J&P Keegan 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. J&P Keegan 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 J&P Keegan 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. J&P Keegan 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. J&P Keegan shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. J&P Keegan 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 J&P Keegan 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 J&P Keegan. Nevertheless, J&P Keegan agrees to be bound by any date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. J&P Keegan 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 J&P Keegan

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

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the clean-up at the Facility as 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, J&P Keegan voluntarily agrees to the issuance of this Order.

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

_____
Melanie Davenport, Director of Enforcement
Department of Environmental Quality

J&P Keegan, LP voluntarily agrees to the issuance of this Order.

Date: 10/28/10 By: _____, Manager of Pinchal & Company, LLC, General Partner of J&P Keegan, LP.

State of TEXAS
~~Commonwealth of Virginia~~
City/County of Houston/ Harris

The foregoing document was signed and acknowledged before me this 28th day of October, 2010, by Alfredo L Gutierrez, Manager of Pinchal & Company, LLC, General Partner of J&P Keegan, LP, on behalf of J&P Keegan, LP, a limited partnership.

_____
Notary Public

_____
Registration No.

My commission expires: 12/7/13

Notary seal: LISA J. BECKMAN Notary Public, State of Texas My Commission Expires December 07, 2013

Appendix A

J&P Keegan shall:

1) **Groundwater Monitoring**

a) **Within 90 days of the effective date of this Order**, J& P Keegan shall submit to DEQ for review and approval a complete, comprehensive groundwater monitoring plan to monitor chromium (total) and nickel concentrations in groundwater at the Facility outside of the Warehouse. The groundwater monitoring plan shall include, but not be limited to: the Maximum Contaminant Level ("MCL") for chromium (total) and the Alternate Concentration Limit ("ACL") for nickel ; any available hydrogeological data and information; identification of all wells to be installed or already installed at the Facility, well construction details, methods to be used for sampling, sampling intervals, sampling and analysis protocols; proposed standards for laboratory results validation and verification; procedures for calculating background values; and any other necessary information so requested by DEQ. This plan shall also, at minimum, propose groundwater monitoring for one year on a quarterly basis at the Facility.

i) J&P Keegan shall respond to any deficiencies or changes requested by DEQ to the groundwater monitoring plan within 20 days.

ii) Upon approval by DEQ, J&P Keegan shall implement and follow the groundwater monitoring plan at the facility.

iii) J&P Keegan shall alter the groundwater monitoring plan if requested by DEQ and implement any changes to the plan requested by DEQ.

iv) J&P Keegan shall receive DEQ approval prior to changing, altering, or amending the groundwater monitoring plan.

v) J&P Keegan shall submit the validated results from the initial round of groundwater sampling within 30 days of receiving the data from the laboratory and any subsequent results obtained from groundwater monitoring as requested by DEQ.

b) At the end of one year of groundwater monitoring as approved under the plan in Item 1a , J&P Keegan shall submit to DEQ for review, a report that shall include, but not be limited to: well construction diagrams, groundwater potentiometric surface maps, hydrogeological cross-sections, estimates of hydraulic conductivity (as based upon at least two field aquifer tests), estimates of hydraulic gradient, and estimates of groundwater velocities, concentrations of constituents of concern, background calculations (if applicable); recommendations for continued groundwater monitoring or corrective action if so required under Item 1c, and any other information so requested by DEQ.

c) If the report provided under Item 1b for groundwater monitoring indicates that concentrations of chromium (total) and nickel are less than or equal to their respective facility background concentrations in all downgradient monitoring wells, then J&P Keegan may terminate groundwater monitoring. If the report provided under Item 1b for groundwater monitoring indicates that concentrations of chromium (total) or nickel exceed their respective facility background concentrations in one or more downgradient

monitoring wells, but do not exceed their respective groundwater protection standard (MCL for chromium and ACL for nickel), then J&P Keegan shall continue groundwater monitoring for another year (four additional quarterly sampling events), after which time conditions will be assessed again. If the report provided under Item 1b for ground water monitoring indicates concentrations of chromium (total) or nickel exceed their respective groundwater protection standard (MCL for chromium and ACL for nickel), as included in the approved groundwater monitoring plan, then J&P Keegan shall submit to DEQ for review and approval a groundwater corrective action plan including corrective action groundwater monitoring for the Facility within 90 days of submittal of the report under Item 1b. Such plan shall include but not be limited to:

i) a proposed selection of a remedy for corrective action that at minimum is protective of human health and the environment, attains the applicable MCL or ACL for groundwater monitoring constituent(s) with the exceedance, and controls the source(s) of release(s) so as to reduce or eliminate further releases of constituents into the environment that may pose a threat to human health or the environment;
ii) a proposed timeframe and schedule to implement the proposed remedy;
iii) proposed locations for the installation of additional monitoring wells sufficient to determine the vertical and horizontal extent of the release of the constituent that exceeded the applicable MCL or ACL;
iv) any additional monitoring constituents requested by DEQ to be included;
v) identification of any drinking water wells downgradient of the Facility;
vi) J&P Keegan shall respond to any deficiencies or changes requested by DEQ to plan within 20 days.
vii) Upon approval by DEQ, J&P Keegan shall implement and follow the corrective action plan at the facility.
viii) J&P Keegan shall alter the corrective action plan and implement any changes to the plan requested by DEQ.
ix) J&P Keegan shall receive DEQ approval prior to changing, altering, or amending the corrective action plan.

d) The groundwater monitoring program at the facility shall be installed and conducted in accordance with, at minimum, any guidance documents or materials provided to J&P Keegan by DEQ as well as any applicable local, state, or federal law or regulation.

2) **Sampling and Remediation**

a) **Within 90 days of the effective date of this Order,** J&P Keegan shall submit a plan for DEQ review and approval to determine the nature and extent of any chromium (total) and nickel contamination of soils and sediment outside of the Warehouse. Such plan shall include but not be limited to: sampling locations outside of the Warehouse; sampling protocols and methods including detection limits; sampling analysis and statistics to be employed; sampling locations and protocol for determination of background concentrations of chromium (total) and nickel in soil and sediment outside of the Warehouse at the Facility; any other necessary information so requested by DEQ.

i) J&P Keegan shall respond to any deficiencies or changes requested by DEQ to plan within 20 days.
ii) Upon approval by DEQ, J&P Keegan shall implement and follow the plan at the facility.
iii) J&P Keegan shall alter the plan and implement any changes to the plan requested by DEQ.
iv) J&P Keegan shall receive DEQ approval prior to changing, altering, or amending the plan.

b) As may be necessary based upon the information received under Item 2a and any other information requested of J&P Keegan by DEQ or used by DEQ, J&P Keegan shall propose to DEQ appropriate risk-based standards for remediation for chromium (total) and nickel and any information needed to determine if those standard should be approved. Such submittal shall include whether such standard is proposed for remediation on-site at the Facility or beyond the Facility boundary.

c) Within 90 days of DEQ approval of the standards proposed pursuant to Item 2b, J&P Keegan shall submit to DEQ for review and approval, a plan to remediate the soil outside of the Warehouse and outside the Facility boundary to the approved standards or background levels for chromium (total) and nickel . This plan shall include but not be limited to: a proposed method to remediate the soils, if necessary, to meet the approved risk-based standard; a proposed schedule and time-line to complete the remediation of the soils; and sampling protocol and methods to be used; and any other information so requested by DEQ.

i) J&P Keegan shall respond to any deficiencies or changes requested by DEQ to plan within 20 days.
ii) Upon approval by DEQ, J&P Keegan shall implement and follow the plan at the facility.
iii) J&P Keegan shall alter the plan and implement any changes to the plan requested by DEQ.
iv) J&P Keegan shall receive DEQ approval prior to changing, altering, or amending the plan.

3) **Other Requirements**

a) J&P Keegan shall notify DEQ at least 30 days prior to any destruction, alterations, changes, modifications, or additions that are made to the Warehouse at the Facility that could alter the impervious nature of the concrete floor in the Warehouse. In such notice, J&P Keegan shall include, but not limit to, the following information: when the proposed alteration, change, addition, or modification is proposed to take place, the extent of any such alteration, change, addition, or modification, and the basis for the alteration, change, addition, or modification. J&P Keegan shall address and respond to any DEQ comments on a proposed alteration, change, modification, or addition that is made to the Warehouse within 10 days of receipt from DEQ. Such response shall include any changes or alterations proposed to any plan required under Item #1 or 2 of this Appendix.

b) J&P Keegan shall notify DEQ at least 30 days prior to any new tenant taking possession of the Warehouse and such notification shall include but not be limited to: when the new lease shall take effect, the new tenant's name and contact information, and the nature of the business or operations of the new tenant.
c) J&P Keegan shall notify DEQ within 30 days prior to any sale of the Facility by J&P Keegan or other transfer of ownership. Such notice shall include but not be limited to: the name and contact of the entity that will obtain ownership of the Facility; when such sale or transfer of ownership will occur; and documentation that J&P Keegan has informed the new owner of the requirements of this Order; documentation that the new owner has agreed to continue to fulfill the requirements of this Order.
d) J&P Keegan shall limit the use of the Facility to use or type of activity or operation approved for an Industrial District as provided for in Chesterfield County Ordinance and according to Chesterfield County zoning laws and regulations. This requirement shall remain regardless of any changes or variances granted by Chesterfield County or other governing body to J&P Keegan for the Facility unless J&P Keegan receives approval from DEQ for some other use or type of activity or operation at the Facility.
e) J&P Keegan shall allow the Director or an authorized representative, upon the presentation of credentials and other documents as may by required by law to:
   i) enter at reasonable times at the Facility;
   ii) have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order;
   iii) inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
   iv) sample or monitor, at reasonable times, for the purpose of assuring compliance with this Order.
f) Upon notification by DEQ, J&P Keegan shall record in the Clerk Office of Chesterfield County, a survey plat prepared by a professional land surveyor registered by the Commonwealth. The plat filed with the local land recording authority shall contain a note, prominently displayed, which states the future owner's obligation to restrict disturbance of the Facility and activity or operation of the Facility. Prior to filing, J&P Keegan shall submit to DEQ the proposed wording of the note for approval. J&P Keegan shall alter the wording if requested by DEQ prior to filing.

4) **Contact**

All items submitted under this Order shall be sent to:
Justin L. Williams
Waste Enforcement Manager
629 E. Main St.
Richmond, VA 23219
Justin.Williams@deq.virginia.gov