



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Doug Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

## VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO METRO MACHINE CORP. EPA ID No. VAD990800138

### **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 Metro Machine Corp. 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. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
6. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

7. “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)-(1).
8. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
9. “Metro” means Metro Machine Corp., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Metro Machine Corp. is a “person” within the meaning of Va. Code § 10.1-1400.
12. “Order” means this document, also known as a “Consent Order” or “Order by Consent.”
13. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
14. “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.
15. “Va. Code” means the Code of Virginia (1950), as amended.
16. “VAC” means the Virginia Administrative Code.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Metro owns and operates a full-service shipyard (“Facility”) located at 200 Ligon Street in Norfolk, Virginia. At the Facility, Metro conducts U.S. Navy ship repairs and conversions and has operated since 1972. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. Metro submitted a RCRA Subtitle C Site Identification Form (received July 16, 1980) that provided notice of regulated waste activity at the Facility as an LQG of hazardous waste. Metro was issued EPA ID No. VAD990800138 for the Facility.
3. On March 11, 2011, Metro contacted DEQ by telephone to report the apparent transport of hazardous waste from the Facility to the Waste Industries, LLC (“WI”) solid waste material recovery facility (“MRF”) located at 3821 Cook Boulevard in Chesapeake, Virginia. Based on the information provided by Metro in a letter dated April 8, 2011, Department staff made the following observations:

- a. Hazardous waste calcium carbide and hazardous waste paint-related material had been placed into a trash dumpster at the Facility and transported by regularly scheduled collection to the WI MRF without a uniform hazardous waste manifest. The uniform hazardous waste manifest dated April 6, 2011 by the response contractor listed 450 lbs hazardous waste calcium carbide (EPA Waste Code D001), and 75 lbs of hazardous waste paint-related (EPA Waste Code D001), which reportedly included the weight of over-pack drums and packing mineral oil for the calcium carbide, and the weight of the drums for waste paint-related material.
  - b. WI does not currently maintain a permit, not has WI been granted interim status, as a facility permitted to treat, dispose or store hazardous waste from offsite.
  - c. Photographs provided by Metro indicated that the containers of hazardous waste calcium carbide at WI were observed to be crushed within the trash dumpster contents, with evidence of the solid chemical calcium carbide released inside of the dumpster, and 'smoke' coming from the dumpster.
  - d. The containers of hazardous waste calcium carbide did not have hazardous waste labeling or EPA waste codes. The container of hazardous waste paint-related material was not marked as to its contents, hazardous waste labeling or EPA waste codes.
  - e. The dumpster contents that included the hazardous waste calcium carbide also included two containers of unknown material that were subsequently identified as one container of hazardous waste paint-related material and one container of non-hazardous waste calcium hydroxide.
4. 40 CFR § 261.20(a)(1) requires generators of hazardous waste who transport, or offer for transport a hazardous waste for offsite treatment, storage or disposal to prepare an uniform hazardous waste manifest.
  5. 40 CFR § 262.20(b) and 9 VAC 20-60-262.B.6 require a generator to designate on the manifest one facility which is permitted to handle the waste described on the manifest.
  6. 40 CFR § 265.173 and 40 CFR 262.34(a)(1)(i) require a container holding hazardous waste to always be closed except when it is necessary to add or remove waste and not to be opened, handled, or stored in a manner which may rupture the container or cause it to leak.
  7. 40 CFR § 262.32(b) requires a generator to mark each container holding 119 gallons or less of hazardous waste with information including the generator's name, address, EPA identification number and manifest number before transporting hazardous waste or offering it for transport.

8. 40 CFR § 262.11 requires a person who generates a solid waste, to determine if that waste is a hazardous waste through testing or applying knowledge of the hazard characteristic of the waste in light of the materials or the process used.
9. On May 6, 2011, based on the March 11, 2011 report by telephone and the April 8, 2011 letter and follow-up information, the Department issued a Notice of Violation to Metro for the violations described in paragraphs C(3) through C(8), above.
10. On May 27, 2011, Department staff met with representatives of Metro to discuss the violations noted in the NOV.
11. Based on the March 11, 2011 verbal report, the April 8, 2011 letter and the May 27, 2011 meeting, the Board concludes that Metro has violated the Regulations, as described in paragraphs C(3) through C(8), above.
12. Metro has submitted documentation that verifies that the violations in paragraphs C(3) through C(8), above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 10.1-1455, the Board orders Metro and Metro agrees to pay a civil charge of \$19,600.00 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

Metro shall include its Federal Employer Identification Number (FEIN) [ 54-1147000 ] 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 the Order with the consent of Metro for good cause shown by Metro, 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 the purposes of this Order and subsequent actions with respect to this Order only, Metro admits to the jurisdictional allegations and agrees not to contest, but does not admit to the findings of fact, and conclusions of law contained herein.
4. Metro 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. Metro 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 Metro 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. Metro does not waive any rights or objections it may have in any enforcement actions by federal, other state or local authorities arising out of the same facts or facts similar to those recited in this Order.
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. Metro 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. Metro shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Metro 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 TRO Regional Director within 24 hours and in writing within three business days, of learning of any condition above, which Metro 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 Metro. Nevertheless, Metro 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 Metro has completed all of the requirements of the Order;
  - b. Metro 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 Metro.

Termination of this Order, or any obligation imposed in this order, shall not operate to relieve Metro 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 Metro 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 Metro 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 Metro to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Metro.
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 parties other than those expressed in this Order.

15. By its signature below, Metro voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 19 day of September, 2011.

Maria R. Doherty  
Regional Director  
Department of Environmental Quality

Metro Machine Corp. voluntarily agrees to the issuance of this Order.

By: John Strem  
Date: 8-8-11

Commonwealth of Virginia  
City of Norfolk

The foregoing document was signed and acknowledged before me this 8<sup>th</sup> day of  
August, 2011, by John Strem who is  
President of Metro Machine Corp., on behalf of the corporation.

Yerita E. Moreno  
Notary Public

My commission expires: 10-31-13

