



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MIKRO SYSTEMS, INC. EPA ID No. VAR000518761

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 Mikro Systems, Inc., regarding the Mikro Systems, Inc. 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. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
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 20-81-10.
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. "Facility" or "Site" means the Mikro facility located at 1180 Seminole Trail, Suite 220 in Charlottesville, Virginia.
7. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
8. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
9. "Mikro" means Mikro Systems, Inc., a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Mikro 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. "RCRA" means the Resource Conservation and Recovery Act, enacted in 1976.
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 Code of Federal Regulations (CFR), with the effective 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. "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).
15. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
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: DEQ's Alleged Findings of Fact and Conclusions of Law

1. Mikro Systems, Inc. (Mikro) owns and operates a facility that casts various ceramic and metal components (Facility) located in Charlottesville, Virginia. At the time of the inspection, the facility was registered as a CESQG of hazardous waste in EPA's database.
2. Mikro submitted a RCRA Subtitle C Site Identification Form, received April 15, 2010, that gave notice of regulated waste activity at the Facility as a CESQG of hazardous waste. Mikro was issued EPA ID No. VAR000518761 for the Facility.
3. At the Facility, Mikro generates the following solid wastes which are also hazardous wastes. Each waste is listed with associated waste codes as described in 40 CFR § 261.24 and 261.31. Hazardous wastes, including those listed below, are accumulated in containers at the Facility after generation.

Ignitable Waste - D001

Corrosive Waste - D002

4. On May 12, 2016, DEQ staff conducted a compliance inspection of the Mikro facility in Charlottesville, Virginia. Staff also reviewed documents provided to DEQ during the course of the inspection. The following describe the staff's factual observations and identify the applicable legal requirements:

- a. Mikro consistently generates over 100 kg a month of hazardous waste.

40 CFR 262.34(d) as referenced in 9 VAC 20-60-262 of the VHWMR states that a small quantity generator is a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status.

- b. Hazardous waste containers in the accumulation area were not properly marked with the words "Hazardous Waste" and were not dated with the time accumulation had begun.

40 CFR 262.34(a)(2) as required by 40 CFR 262.34(d)(4) and as referenced in 9 VAC 20-60-262 of the VHWMR requires that generators date each container when accumulation begins, and that the date is clearly marked and visible for inspection.

- c. 40 CFR 262.34(a)(3) as required by 40 CFR 262.34(d)(4) and as referenced in 9 VAC 20-60-262 of the VHWMR requires that generators label each container with the Words "Hazardous Waste" while being accumulated on-site.

Hazardous waste containers in satellite areas were not properly marked with the words "Hazardous Waste."

40 CFR 262.34(c)(1)(ii) as referenced in 9 VAC 20-60-262 of the VHWMR requires that generators label each container with the words "Hazardous Waste."

d. Mikro did not complete weekly inspections of the two accumulation areas.

40 CFR 265.174 as required by 40 CFR 262.34(d)(2) and as referenced in 9 VAC 20-60-262 and 265 of the VHWMR requires that at least weekly, the owner or operator must inspect areas where containers are stored.

5. On June 20, 2016, DEQ issued Notice of Violation (NOV) No. 16-06-VRO-004 to Mikro for the violations listed in paragraph C(4), above.
6. On July 22, 2016, Mikro submitted a response to the NOV that indicated that drums were being properly labeled and that weekly inspections were being performed and documented, correcting the violations listed in C(4), above.
7. Mikro submitted a RCRA Subtitle C Site Identification Form, received August 1, 2016, that gave notice of regulated waste activity at the Facility as an SQG of hazardous waste.
8. Based on the results of the May 12, 2016 inspection, the Board concludes that Mikro has violated 40 CFR 262.34(a)(2), 40 CFR 262.34(a)(3), 40 CFR 262.34(c)(1)(ii) and 40 CFR 265.174 as described in paragraph C(4), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Mikro, and Mikro agrees to:

- i. Pay a civil charge of **\$3,250.00** within 30 days of the effective date of the Order in settlement of the violations alleged 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

Mikro shall include its Federal Employer Identification Number 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). If the

Department has to refer collection of moneys due under this Order to the Department of Law, Mikro shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Mikro for good cause shown by Mikro, 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 alleged violations specifically identified in Section C of this Order and in NOV No. 16-06-VRO-004 dated June 20, 2016. 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, Mikro admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the alleged findings of fact and conclusions of law in this Order.
4. Mikro 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. Mikro 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 Mikro 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. Mikro 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Mikro shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mikro 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 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.

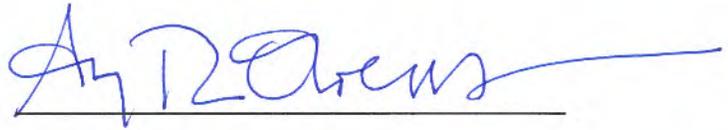
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mikro. Nevertheless, Mikro agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. the Director or his designee terminates the Order after Mikro has completed all of the requirements of the Order;
 - b. Mikro 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 Mikro.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mikro 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 Mikro 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 Mikro certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Mikro to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Mikro.
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, Mikro voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 30th day of March, 2017.

A handwritten signature in blue ink, reading "Amy T. Owens", written over a horizontal line.

Amy T. Owens, Regional Director
Department of Environmental Quality

Mikro Systems, Inc. voluntarily agrees to the issuance of this Order.

Date: 2/20/2017 By: *Pamela Meller*
PAMELA MELLER, COO
Name Title
Mikro Systems, Inc.

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this 20th day of
February, 2017, by *Pamela Meller* who is
COO of Mikro Systems, Inc., on behalf of the company.

Notary Public *Patrick George Gollinger*

Registration No. 7668131

My commission expires: July 31 2020

Notary seal:

