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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Wolf Hills Fabricators, LLC
FOR THE
Wolf Hills Fabricators Facility
Located at 26161 Old Trail Road, Abingdon, Virginia
EPA ID No. VAD095317350**

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 Wolf Hills Fabricators, LLC, regarding the Wolf Hills Fabricators Facility located at 26161 Old Trail Road, Abingdon, Virginia, 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. "Facility" means the Wolf Hills Fabricators Facility located at 26161 Old Trail Road, Abingdon, Virginia.
6. "Generator" means a person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
7. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
10. "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.
11. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
12. "SQG" means a small quantity generator, a hazardous waste generator that generates any of the following amounts in a calendar month: greater than 100 kilograms (220 pounds) but less than 1000 kilograms (2200 pounds) of non-acute hazardous waste, or less than or equal to 1 kilogram (2.2 pounds) or acute hazardous waste, or less than or equal to 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e). *See* 40 CFR § 260.10
13. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "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.

17. "VSQG" means very small quantity generator, a generator who generates less than or equal to the following amounts in a calendar month: (1) 100 kilograms (220 lbs) of non-acute hazardous waste; and (2) 1 kilogram (2.2 lbs) of acute hazardous waste listed in §261.31 or §261.33(e) of this chapter; and (3) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e) of this chapter."
18. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
19. "Wolf Hills" means Wolf Hills Fabricators, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Wolf Hills Fabricators, LLC is a "person" within the meaning of Va. Code § 10.1-1400.

SECTION C: Findings of Fact and Conclusions of Law

1. Wolf Hills owns and operates the Facility near Abingdon, Virginia. The Facility performs heavy metal fabrication and manufacturing services for the mining industry and other sectors. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. The Facility had previously notified as a SQG on January 5, 2008, under previous ownership, and was assigned EPA ID No. VAD095317350.
3. At the Facility, Wolf Hills generates the following wastes. Each listed hazardous waste has associated waste code(s) as described in 40 CFR §§ 261.21, 261.24 and 261.31. The hazardous wastes are accumulated in containers at the Facility after each is generated.

Paint and solvent waste (F003, F005, D001)
Paint/solvent waste solids (F003, F005, D001)
Paint waste solids – solid waste
Plasma slag – scrap metal
Plasma dust – solid waste
Spent black beauty abrasive – solid waste
Oil/hydraulic fluid contaminated coal/shale – solid waste
Used antifreeze
Universal waste lamps
Aerosol cans (D001)
Scrap metal
Spent batteries – core charge

4. On December 12, 2019, DEQ staff conducted a Compliance Evaluation Inspection ("CEI") at the Facility. Staff also reviewed documents provided to DEQ by Wolf Hills during the course of the inspection. A Request for Information ("RFI") letter was then sent to Wolf Hills by DEQ staff on February 6, 2020, requesting that the following information be provided:

- a.) All available waste characterization/determination data for the following waste streams:
 - 1) paint and solvent;
 - 2) paint and solvent solids;
 - 3) plasma dust; and
 - 4) spent "Black Beauty" abrasive.
- b.) Any additional waste shipment records over the last three years, which were not available at the time of the CEI;
- c.) the final quantity and disposition of paint and solvent wastes which were shipped over the last three years to MXI, Inc. or any other facility and the regulatory basis for how MXI was justified in receiving the wastes from Wolf Hills;
- d.) Documentation of any SQG arrangements with authorities that were in place at the time of the CEI;
- e.) Documentation of any SQG training requirements that were in place at the time of the CEI; and
- f.) Documentation of the Facility's waste generation, counting and accumulation history for the last three years.

Although Facility personnel did respond to the letter, no additional information regarding the requested information was provided by Wolf Hills.

5. Wolf Hills failed to make an accurate hazardous waste determination on the following waste streams: waste paint and solvent, waste paint and solvent solids, plasma dust, spent black beauty abrasive, aerosol cans, and fluorescent lamps.

40 CFR §262.11 as referenced by 9VAC20-60- 262 states, "Hazardous waste determination and recordkeeping. A person who generates a solid waste, as defined in 40 CFR 261.2, must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable RCRA regulations. A hazardous waste determination is made using the following steps: (a) The hazardous waste determination for each solid waste must be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the RCRA classification of the waste may change. (b) A person must determine whether the solid waste is excluded from regulation under 40 CFR 261.4. (c) If the waste is not excluded under 40 CFR 261.4, the person must then use knowledge of the waste to determine whether the waste meets any of the listing descriptions under subpart D of 40 CFR part 261. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information. If the waste is listed, the person may file a delisting petition under 40 CFR 260.20 and 260.22 to demonstrate to the Administrator that the waste from this particular site or operation is not a hazardous waste. (d) The person then must also determine whether the waste exhibits one or more hazardous characteristics as identified in subpart C of 40 CFR part 261 by following the procedures in paragraph (d)(1) or (2) of this section, or a combination of both. (1) The person must apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste. Acceptable knowledge may include process knowledge (e.g., information about chemical

feedstocks and other inputs to the production process); knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents. A test other than a test method set forth in subpart C of 40 CFR part 261, or an equivalent test method approved by the Administrator under 40 CFR 260.21, may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at 40 CFR 260.10. (2) When available knowledge is inadequate to make an accurate determination, the person must test the waste according to the applicable methods set forth in subpart C of 40 CFR part 261 or according to an equivalent method approved by the Administrator under 40 CFR 260.21 and in accordance with the following: (i) Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at 40 CFR 260.10. (ii) Where a test method is specified in subpart C of 40 CFR part 261, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste. (e) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 267, 268, and 273 of this chapter for other possible exclusions or restrictions pertaining to management of the specific waste.”

6. During the CEI, DEQ staff observed waste streams that were being managed as solid waste. At the time of inspection, the Facility provided Safety Data Sheets (SDS) as waste characterization documentation, which indicated that some wastes (waste paint and solvent) may have flash points below 140 deg. F. Waste plasma dust and spent black beauty abrasive may have constituents that are not able to be identified by SDS (heavy metal constituents from cut or abraded metal). The Facility did not have analytical or other documentation on file documenting the Facility's hazardous waste determinations.

40 CFR §262.11(f) as referenced by 9VAC 20-60-262 states: “(f) Recordkeeping for small and large quantity generators. A small or large quantity generator must maintain records supporting its hazardous waste determinations, including records that identify whether a solid waste is a hazardous waste, as defined by 40 CFR 261.3. Records must be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records must comprise the generator's knowledge of the waste and support the generator's determination, as described at paragraphs (c) and (d) of this section. The records must include, but are not limited to, the following types of information: The results of any tests, sampling, waste analyses, or other determinations made in accordance with this section; records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests; records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and records which explain the knowledge basis for the generator's determination, as described at paragraph (d)(1) of this section. The periods of record retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.”

7. Wolf Hills failed to identify all applicable waste codes for hazardous wastes generated. Waste paint and solvent is generated from coating operations. The primary solvent used for gun cleanout is "DT5 Acrylic Lacquer Thinner". Based upon SDS information provided by Wolf Hills, any wastes containing this solvent would carry F003 and F005 waste codes. Liquid paint and solvent mixtures may carry D001 waste codes. Since September, 2016, over 6,200 pounds of F003 and F005 listed hazardous waste were disposed of as solid waste.

40 CFR §262.11(g) as referenced by 9VAC 20-60-262 states: "(g) Identifying hazardous waste numbers for small and large quantity generators. If the waste is determined to be hazardous, small quantity generators and large quantity generators must identify all applicable EPA hazardous waste numbers (EPA hazardous waste codes) in subparts C and D of part 261 of this chapter. Prior to shipping the waste off site, the generator also must mark its containers with all applicable EPA hazardous waste numbers (EPA hazardous waste codes) according to §262.32."

8. During the CEI, Wolf Hills was managing eight containers of F003/F005 hazardous waste paint waste on-site in 55-gallon drums prior to being sent off-site for disposal. Per information given by Facility staff, the most recent shipment of this type of waste had occurred 584 days prior to the date of the CEI. The eight containers were stored on site >180/270 days without a permit or interim status.

40 CFR §262.16(a) states: "Conditions for exemption for a small quantity generator that accumulates hazardous waste. A small quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of parts 124, 264 through 267, and 270 of this chapter, or the notification requirements of section 3010 of RCRA, provided that all the conditions for exemption listed in this section are met: (a) Generation. The generator generates in a calendar month no more than the amounts specified in the definition of "small quantity generator" in §260.10 of this chapter. (b) Accumulation. The generator accumulates hazardous waste on site for no more than 180 days, unless in compliance with the conditions for exemption for longer accumulation in paragraphs (d) and (e) of this section."

40 CFR §262.16(d) states: "(d) Accumulation time limit extension. A small quantity generator who accumulates hazardous waste for more than 180 days (or for more than 270 days if it must transport its waste, or offer its waste for transportation, over a distance of 200 miles or more) is subject to the requirements of 40 CFR parts 264, 265, 267, 268, and 270 of this chapter unless it has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by EPA if hazardous wastes must remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis."

9. Wolf Hills had not been using a uniform hazardous waste manifest to ship F003/F005 hazardous paint waste off-site.

40 CFR §262.20 General requirements. (a)(1) A generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to this part.

10. Wolf Hills had been disposing of the hazardous paint and solvent waste at a facility which is not a treatment, storage or disposal facility (TSDF). Since September, 2016, over 6,200 pounds of F003 and F005 listed hazardous waste were disposed of as solid waste.

40 CFR §262.18 EPA identification numbers. (c) A generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

40 CFR §262.20(b) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

40 CFR §260.10 Definitions. Designated facility means: (1) A hazardous waste treatment, storage, or disposal facility which: (i) Has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of this chapter; (ii) Has received a permit (or interim status) from a State authorized in accordance with part 271 of this chapter; or (iii) Is regulated under §261.6(c)(2) or subpart F of part 266 of this chapter; and (iv) That has been designated on the manifest by the generator pursuant to §262.20. (2) Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with §264.72(f) or §265.72(f) of this chapter. (3) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

11. During the CEI, Wolf Hills was managing F003/F005 hazardous waste paint waste on-site in drums prior to being sent off-site for disposal. The drums were not labeled with the words “Hazardous Waste” and an indication of the hazards of the contents while being accumulated.

40 CFR §262.16(b)(6)(i) states: “(6) Labeling and marking of containers and tanks— (i) Containers. A small quantity generator must mark or label its containers with the following: (A) The words “Hazardous Waste”; (B) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704)”.

12. During the CEI, Wolf Hills was managing F003/F005 hazardous waste paint waste on-site in drums prior to being sent off-site for disposal. The drums were not labeled with an accumulation start date.

40 CFR §262.16(b)(6) states: “(6) Labeling and marking of containers and tanks— (i) Containers. A small quantity generator must mark or label its containers with the following: ... (C) The date upon which each period of accumulation begins clearly visible for inspection on each container.”

13. No inspections of the <180 day hazardous waste container accumulation areas were being conducted, and no log of inspections was being maintained. .

40 CFR § 262.16(b)(2)(iv) states: “(iv) Inspections. At least weekly, the small quantity generator must inspect central accumulation areas. The small quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. See paragraph (b)(2)(i) of this section for remedial action required if deterioration or leaks are detected.”

14. Wolf Hills had not made arrangements to familiarize emergency response teams with the layout of the Facility and associated hazards, and it did not have documentation to show that these authorities had declined to enter into such an agreement. The Facility employs a member of the local volunteer fire department and stated that tours of the Facility had been conducted in the past, but SQG requirements related to emergency preparedness and employee training were not being met.

40 CFR § 262.16(b)(8)(vi)(A and B) states: “(vi) Arrangements with local authorities. (A) The small quantity generator must attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements. (1) A small quantity generator attempting to make arrangements with its local fire department must determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals. (2) As part of this coordination, the small quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses that could result from fires, explosions, or releases at the facility. (3) Where more than one police or fire department might respond to an emergency, the small quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority. (B) A small quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.”

15. Wolf Hills staff was unable to provide documentation associated with SQG Emergency Response requirements, including but not limited to posting of Facility emergency coordinator name and phone number or the location of fire extinguishers, fire alarms and spill control materials.

40 CFR § 262.16(b)(9)(i and ii) states: “(9) Emergency procedures. The small quantity generator complies with the following conditions for those areas of the generator facility where hazardous waste is generated and accumulated: (i) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (b)(9)(iv) of this section. This employee is the emergency coordinator. (ii) The small quantity generator must post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste: (A) The name and emergency telephone number of the emergency coordinator; (B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and (C) The telephone number of the fire department, unless the facility has a direct alarm.”

16. Wolf Hills staff was unable to provide documentation associated with SQG Training requirements.

40 CFR § 262.16(b)(9)(iii) states: “(iii) The small quantity generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies”

17. Wolf Hills did not determine if its F003/F005 hazardous paint waste had to be treated before it could be land disposed.

40 CFR §262.16(b)(7) states, “(7) Land disposal restrictions. A small quantity generator must comply with all the applicable requirements under 40 CFR part 268.”

40 CFR §268.7 states, “Testing, tracking, and recordkeeping requirements for generators, reverse distributors, treaters, and disposal facilities. (a) Requirements for generators: (1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in §268.40, 268.45, or §268.49. This determination can be made concurrently with the hazardous waste determination required in §262.11 of this chapter, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in “Test Methods of Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, (incorporated by reference, see §260.11 of this chapter), depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. (Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of §264.13 of this chapter and paragraph (b) of this section.) In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in

§268.40, and are described in detail in §268.42, Table 1. These wastes, and soils contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of §268.9 of this part in addition to any applicable requirements in this section.”

18. No Land Disposal Restrictions notifications had been made to the facility receiving the hazardous waste.

40 CFR §268.7 states, “Testing, tracking, and recordkeeping requirements for generators, reverse distributors, treaters, and disposal facilities. (a) Requirements for generators: (2) If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column “268.7(a)(2)” of the Generator Paperwork Requirements Table in paragraph (a)(4) of this section. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state “This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.”) No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file. (3) If the waste or contaminated soil meets the treatment standard at the original point of generation: (i) With the initial shipment of waste to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each treatment, storage, or disposal facility receiving the waste, and place a copy in the file. The notice must include the information indicated in column “268.7(a)(3)” of the Generator Paperwork Requirements Table in §268.7(a)(4) and the following certification statement, signed by an authorized representative: I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in 40 CFR part 268 subpart D. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment. (ii) For contaminated soil, with the initial shipment of wastes to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each facility receiving the waste and place a copy in the file. The notice must include the information in column “268.7(a)(3)” of the Generator Paperwork Requirements Table in §268.7(a)(4). (iii) If the waste changes, the generator must send a new notice and certification to the receiving facility, and place a copy in their files. Generators of hazardous debris excluded from the definition of hazardous waste under §261.3(f) of this chapter are not subject to these requirements. (4) For reporting, tracking, and recordkeeping when exceptions allow certain wastes or contaminated soil that do not meet the treatment standards to be land disposed: There are certain exemptions from the requirement that hazardous wastes or contaminated soil meet treatment standards before they can be land disposed. These include, but are not limited to case-by-case extensions under §268.5, disposal in a no-

migration unit under §268.6, or a national capacity variance or case-by-case capacity variance under subpart C of this part. If a generator's waste is so exempt, then with the initial shipment of waste, the generator must send a one-time written notice to each land disposal facility receiving the waste. The notice must include the information indicated in column "268.7(a)(4)" of the Generator Paperwork Requirements Table below. If the waste changes, the generator must send a new notice to the receiving facility, and place a copy in their files."

19. Wolf Hills had not determined waste codes applicable to its hazardous waste, or underlying hazardous constituents, in order to determine treatment standards for the waste.

40 CFR § 268.9 states, "§268.9 Special rules regarding wastes that exhibit a characteristic.(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. This determination may be made concurrently with the hazardous waste determination required in §262.11 of this chapter. For purposes of part 268, the waste will carry the waste code for any applicable listed waste (40 CFR part 261, subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (40 CFR part 261, subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of §268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined at §268.2(i)) in the characteristic waste. (b) Where a prohibited waste is both listed under 40 CFR part 261, subpart D and exhibits a characteristic under 40 CFR part 261, subpart C, the treatment standard for the waste code listed in 40 CFR part 261, subpart D will operate in lieu of the standard for the waste code under 40 CFR part 261, subpart C, provided that the treatment standard for the listed waste includes a treatment standard for the constituent that causes the waste to exhibit the characteristic. Otherwise, the waste must meet the treatment standards for all applicable listed and characteristic waste codes. (c) In addition to any applicable standards determined from the initial point of generation, no prohibited waste which exhibits a characteristic under 40 CFR part 261, subpart C may be land disposed unless the waste complies with the treatment standards under subpart D of this part. (d) Wastes that exhibit a characteristic are also subject to §268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's on-site files. The notification and certification must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes. (1) The notification must include the following information: (i) Name and address of the RCRA Subtitle D facility receiving the waste shipment; and (ii) A description of the waste as initially generated, including the applicable EPA hazardous waste code(s), treatability group(s), and underlying hazardous constituents (as defined in §268.2(i)), unless the waste will be treated and monitored for all underlying hazardous constituents. If all underlying hazardous constituents will be treated and monitored, there is no requirement to list any of the underlying hazardous constituents on the notice. (2) The certification must be signed by an authorized representative and must state the language found in §268.7(b)(4). (i) If treatment removes the characteristic but does not meet standards applicable to underlying hazardous constituents, then the certification found in §268.7(b)(4)(iv) applies."

20. Land Disposal Restricted wastes were being sent for land disposal without first being treated to meet the applicable treatment standards and without Wolf Hills having met any of the conditions that allow for restricted wastes to be land disposed.

40 CFR §268.1 states, "Purpose, scope, and applicability. (a) This part identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed. (b) Except as specifically provided otherwise in this part or part 261 of this chapter, the requirements of this part apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities. (c) Restricted wastes may continue to be land disposed as follows: (1) Where persons have been granted an extension to the effective date of a prohibition under subpart C of this part or pursuant to §268.5, with respect to those wastes covered by the extension; (2) Where persons have been granted an exemption from a prohibition pursuant to a petition under §268.6, with respect to those wastes and units covered by the petition; (3) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under this part, or part 148 of this chapter, are not prohibited if the wastes: (i) Are disposed into a nonhazardous or hazardous injection well as defined under 40 CFR 146.6(a); and (ii) Do not exhibit any prohibited characteristic of hazardous waste identified in 40 CFR part 261, subpart C at the point of injection. (4) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under this part, are not prohibited if the wastes meet any of the following criteria, unless the wastes are subject to a specified method of treatment other than DEACT in §268.40, or are D003 reactive cyanide: (i) The wastes are managed in a treatment system which subsequently discharges to waters of the U.S. pursuant to a permit issued under section 402 of the Clean Water Act; or (ii) The wastes are treated for purposes of the pretreatment requirements of section 307 of the Clean Water Act; or (iii) The wastes are managed in a zero discharge system engaged in Clean Water Act-equivalent treatment as defined in §268.37(a); and (iv) The wastes no longer exhibit a prohibited characteristic at the point of land disposal (i.e., placement in a surface impoundment). (d) The requirements of this part shall not affect the availability of a waiver under section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (e) The following hazardous wastes are not subject to any provision of part 268: (1) Waste generated by small quantity generators of less than 100 kilograms of non-acute hazardous waste or less than 1 kilogram of acute hazardous waste per month, as defined in §261.5 of this chapter; (2) Waste pesticides that a farmer disposes of pursuant to §262.70; (3) Wastes identified or listed as hazardous after November 8, 1984 for which EPA has not promulgated land disposal prohibitions or treatment standards; (4) *De minimis* losses of characteristic wastes to wastewaters are not considered to be prohibited wastes and are defined as losses from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one per cent of the total flow of wastewater into the facility's headworks on an annual basis, or with a combined annualized average concentration not exceeding one part per million in the headworks of the facility's wastewater treatment or pretreatment facility."

40 CFR §268.6 states in part, “Petitions to allow land disposal of a waste prohibited under subpart C of part 268. (a) Any person seeking an exemption from a prohibition under subpart C of this part for the disposal of a restricted hazardous waste in a particular unit or units must submit a petition to the Administrator demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The demonstration must include the following components:...”

21. During the CEI, one 500-gallon used oil tank was observed with no markings or labels, but labeling was added during the inspection.

40 CFR § 279.22(c)(1) states: “Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil"”.

22. During the CEI, no documentation was provided indicating that all employees who handle/have responsibility for handling waste lamps had received relevant information regarding proper handling and emergency procedures.

40 CFR § 273.16 states: “A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.”

23. During the CEI, DEQ observed that documentation of all notices, certifications demonstrations, waste analysis data, and other documentation was not retained for at least three years.

40 CFR § 268.7(a)(8) states: “(8) Generators must retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this section for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The three year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. The requirements of this paragraph apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under 40 CFT 261.2 through 261.6, or exempted from Subtitle C regulations, subsequent to the point of generation.”

24. On March 23, 2020, based on the inspection and information reviewed, the Department issued Notice of Violation No. NOV-002-0320-HW to Wolf Hills.
25. On April 21, 2020, Wolf Hills responded to the NOV in writing, stating a willingness to work to achieve compliance, but qualifying timeframes due to staffing restrictions related to COVID-19 issues.
26. On May 13, 2020, Wolf Hills personnel contacted DEQ staff requesting a list of environmental consultants that could help the Facility with its compliance issues. While making no recommendation, DEQ staff provided a consultant list on May 15, 2020.

27. Based on the results of the December 12, 2019 CEI and information reviewed, the Board concludes that Wolf Hills has violated 40 CFR § 262.11(a, c, d), 40 CFR § 262.11(f), 40 CFR § 262.11(g), 40 CFR § 262.16(a, d), 40 CFR § 262.20(a)(1), 40 CFR § 262.18(c), 40 CFR § 262.20(b), 40 CFR § 262.16(b)(6)(i)(A, B), 40 CFR § 262.16(b)(6)(i)(C), 40 CFR § 262.16(b)(2)(iv), 40 CFR § 262.16(b)(8)(vi)(A, B), 40 CFR § 262.16(b)(9)(i, ii), (ii)(A, B, C), 40 CFR § 262.16(b)(9)(iii), 40 CFR § 268.7(a)(1) per § 262.16(b)(7), 40 CFR § 268.7(a)(2-4), 40 CFR § 268.9(a), 40 CFR § 268.1(a), 40 CFR § 268.6, 40 CFR § 279.22(c)(1), 40 CFR § 273.16 and 40 CFR § 268.7(a)(8), as described in paragraphs C(5) through C(23) above.
28. In order for Wolf Hills to complete its return to compliance, DEQ staff and representatives of Wolf Hills 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 in Va. Code § 10.1-1455, the Board orders Wolf Hills Fabricators, LLC, and Wolf Hills Fabricators, LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$54,040.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Payment 1	\$13,510.00	Due November 30, 2020
Payment 2	\$13,510.00	Due December 31, 2020
Payment 3	\$13,510.00	Due January 31, 2021
Payment 4	\$13,510.00	Due February 28, 2021

Each 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

Wolf Hills Fabricators, LLC shall include its Federal Employer Identification Number (FEIN) with each civil charge payment and shall indicate that each 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, Wolf Hills Fabricators, LLC 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 Wolf Hills for good cause shown by Wolf Hills, 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 and in NOV No. NOV-002-0320-HW dated March 23, 2020. 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, Wolf Hills admits to the jurisdictional allegations, findings of fact and conclusions of law in this Order.
4. Wolf Hills 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. Wolf Hills 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 Wolf Hills 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. Wolf Hills 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. Wolf Hills shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Wolf Hills 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 Wolf Hills.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Wolf Hills has completed all of the requirements of the Order;
 - b. Wolf Hills 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 Wolf Hills.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Wolf Hills 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 Wolf Hills 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 Wolf Hills 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 Wolf Hills to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Wolf Hills.
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, Wolf Hills voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2020.

Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

Wolf Hills Fabricators, LLC voluntarily agrees to the issuance of this Order.

Date: 9/15/20 By: [Signature], PRESIDENT
(Person) (Title)
Wolf Hills Fabricators, LLC

Commonwealth of Virginia

City/County of Washington

The foregoing document was signed and acknowledged before me this 15 day of

September, 2020, by Eric Miller who is

President of Wolf Hills Fabricators, LLC, on behalf of the company.

[Signature]
Notary Public

7541462
Registration No.

My commission expires: 04/30/2021

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the Virginia Waste Management Act and the Virginia Hazardous Waste Management Regulations, Wolf Hills agrees to implement the following actions by the dates noted below:

1. Submit analytical or other documentation verifying that accurate hazardous waste determinations have been made on the following waste streams: waste paint and solvent, waste paint and solvent solids, plasma dust, spent black beauty abrasive, aerosol cans, and fluorescent lamps.....no later than October 1, 2020;
2. Submit documentation verifying correct identification of all applicable waste codes for all hazardous wastes generated at the Facility.....no later than October 1, 2020;
3. Submit documentation verifying disposal of all hazardous waste present at the Facility at the time of the CEI at a designated TSDF.....no later than October 1, 2020;
4. Submit documentation verifying that all containers being utilized at the Facility to manage hazardous waste prior to being sent off-site for disposal are labeled with the words "Hazardous Waste", give an indication of the hazards of the contents while being accumulated, and show an accumulation start date.....no later than October 1, 2020;
5. Submit documentation verifying that weekly inspections of the <180 day hazardous waste container accumulation areas are being conducted, and a log of inspections is being maintained.....no later than October 1, 2020;
6. Submit documentation verifying that Wolf Hills has made arrangements to familiarize emergency response teams with the layout of the Facility and associated hazards, or submit documentation showing that these authorities have declined to enter into such an agreement.....no later than October 1, 2020;
7. Submit documentation verifying the posting of the Facility emergency coordinator name and phone number, the location of fire extinguishers, fire alarms and spill control materials available at the Facility, and the phone number of the fire department, unless the facility has a direct alarm.....no later than October 1, 2020;
8. Submit documentation verifying that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal Facility operations and emergencies..... no later than October 1, 2020;

9. Submit documentation verifying that the following land disposal restrictions conditions are being met.....no later than October 1, 2020;
 - a.) an accurate determination of whether the Facility's F003/F005 hazardous paint waste requires treatment before it can be land disposed;
 - b.) proper notifications have been made to the facility receiving the hazardous waste;
 - c.) an accurate determination of waste codes applicable to the Facility's hazardous waste or underlying hazardous constituents has been done, in order to determine applicable treatment standards for the waste; and
 - d.) if allowable, meeting all of the conditions that allow for restricted wastes from the Facility to be land disposed.

10. Submit documentation indicating that all employees who handle/have responsibility for handling waste lamps have received relevant information regarding proper handling and emergency procedures.....no later than October 1, 2020; and

11. No later than October 1, 2020, submit a statement that documentation of all notices, certifications demonstrations, waste analysis data, and other documentation will be retained for a minimum of at least three years.

12. Unless otherwise specified in this Order, Wolf Hills shall submit all requirements of Appendix A of this Order to:

Ralph T. Hilt
Enforcement/Compliance Specialist, Sr.
Virginia DEQ – Southwest Regional Office
355-A Deadmore Street
Abingdon, Virginia 24210
phone: (276) 676-4878; fax: (276) 676-4899
e-mail: ralph.hilt@deq.virginia.gov