



# **COMMONWEALTH of VIRGINIA**

Molly Joseph Ward  
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY  
Blue Ridge Regional Office  
3019 Peters Creek Road, Roanoke, Virginia 24019  
(540) 562-6700; Fax (540) 562-6725  
[www.deq.virginia.gov](http://www.deq.virginia.gov)

David K. Paylor  
Director

Robert J. Weld  
Regional Director

## **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ELECTROPLATE-RITE CORP. EPA ID No. VAD043344472**

### **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 Electroplate-Rite 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. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
4. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
5. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled, as defined by 40 CFR § 260.10.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "ERC" means Electroplate-Rite Corp., a company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. ERC is a "person" within the meaning of Va. Code § 10.1-1400.
9. "Facility" or "Site" means the Electroplate-Rite facility located at 5529 Lee Highway in Dublin, Virginia.
10. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
11. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
12. "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)-(l).
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
14. "Order" means this document, also known as a Consent Order.
15. "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 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.
16. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
17. "Storage" means the holding of solid or hazardous waste for a temporary period, at the end of which the waste is treated, disposed of, or stored elsewhere, as defined by 40 CFR § 260.10 and 9 VAC 20-81-10, as applicable.
18. "Va. Code" means the Code of Virginia (1950), as amended.

19. "VAC" means the Virginia Administrative Code.
20. "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: Findings of Fact and Conclusions of Law**

1. ERC owns and operates the Facility, which is located in Dublin, Virginia. The Facility is an electroplating operation. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. ERC is a LQG of hazardous waste. ERC was issued EPA ID No. VAD043344472 for the Facility.
3. At the Facility, ERC generates solid wastes which are also hazardous wastes. Hazardous wastes generated at the Facility include wastes with the following waste codes: D001, D002, F003-F008, D035, as described in 40 CFR § 261.21. These hazardous wastes are accumulated in containers at the Facility after generation.
4. On August 5, 2016, DEQ-BRRO staff inspected the Facility for compliance with the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, the Department made the following observations:

- a. ERC did not submit a Biennial Report for 2015 (due March 1, 2016).

40 CFR § 262.41 requires generators who ship any hazardous waste off-site to a treatment, storage or disposal facility within the United States to submit a biennial report by March 1 of each even numbered year.

- b. ERC failed to specify training requirements in position descriptions for hazardous waste handlers.

40 CFR § 265.16(d) requires the owner or operator to maintain the following documents and records at the facility: (1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling the job; (2) A written job description for each position listed above; (3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed above; (4) Records that document that the training or job experience required above has been given to, and completed by, facility personnel.

- c. ERC failed to provide annual refresher training every year.

40 CFR § 265.16(a) requires that facility personnel complete training in hazardous waste management.

40 CFR § 265.16(c) states that facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.

- d. ERC failed to make a hazardous waste determination for spray booth filters.

40 CFR § 262.11 requires that a person who generates a solid waste, as defined in 40 CFR § 261.2, determine if that waste is a hazardous waste.

- e. ERC failed to keep all hazardous containers closed.

40 CFR § 265.173(a) requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

- f. ERC failed to label two containers of hazardous waste in a 90-day accumulation area with the words "hazardous waste".

40 CFR § 262.34(a)(3) requires generators to mark each hazardous waste container in 90-day accumulation areas with the words "Hazardous Waste".

- g. ERC failed to label one container of hazardous waste in a satellite accumulation area with the words "hazardous waste".

40 CFR § 262.34(c)(1)(ii) requires that generators of hazardous waste mark hazardous waste containers in satellite areas with the words "Hazardous Waste".

- h. A container used for satellite accumulation was not under the control of the operator of the process generating the waste.

40 CFR § 262.34(c)(1) states that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, provided that the generator complies with certain other requirements.

- i. ERC failed to keep containers of universal waste closed.

40 CFR § 273.13(d)(1) requires that a generators of universal waste contain any lamp in containers or packages that . . . must remain closed.

- j. ERC did not use a used oil transporter with an EPA ID number to transport its used oil off-site.

40 CFR § 279.24 states that, except as otherwise specified, generators must ensure that their used oil is transported only by transporters who have obtained ERA identification numbers.

- k. ERC failed to make an on-specification determination for its used oil.

40 CFR § 279.11 states that used oil burned for energy recovery is subject to regulation under this part unless it is shown not to exceed specified allowable levels of the constituents and properties.

1. ERC failed to maintain records of used oil shipments made to individuals who burn the used oil for energy recovery.

40 CFR § 279.74(b) states that a generator who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under §279.11 must keep a record of each shipment of used oil to the facility to which it delivers the used oil.

5. On December 1, 2016, based on the August 5, 2016 inspection and follow-up information, the Department issued NOV No. 16-11-BRRO-005 to ERC for the violations described in Paragraph C(4) above.
6. On March 9, March 13, April 7, and April 28, 2017, ERC submitted written responses to the NOV.
7. On January 19, 2017, DEQ staff and representatives of ERC met to discuss the NOV.
8. Based on the results of the August 5, 2016 inspection, and the documentation submitted by ERC, the Board concludes that ERC has violated 40 CFR § 262.41(a), 40 CFR § 265.16(d)(3), 40 CFR § 265.16(c), 40 CFR § 262.11, 40 CFR § 265.173(a), 40 CFR § 262.34(a)(3), 40 CFR § 262.34(c)(1)(ii), 40 CFR § 273.13(d)(1), 40 CFR §279.11 and 40 CFR § 279.74(b) as described in paragraph C(4), above.
9. ERC has submitted documentation that verifies that the violations described in Paragraphs C(4)(a), C(4)(c) through C(4)(h), C(4)(j) through C(4)(l) above, have been corrected.

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

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

1. To perform the actions described in Appendix A of this Order; and
2. To pay a civil charge of \$12,194.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
August 15, 2017	\$3,048.50
November 15, 2017	\$3,048.50 or balance
February 15, 2018	\$3,048.50 or balance

May 15, 2018	\$3,048.50 or balance
--------------	-----------------------

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by ERC. Within 15 days of receipt of such letter, ERC shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order. If the Department has to refer collection of moneys due under this Order to the Department of Law, ERC shall be liable for attorneys' fees of 30% of the amount outstanding.
4. All payments 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
5. ERC shall include its Federal Employer Identification Number (FEIN) (\_\_\_\_\_) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of ERC for good cause shown by ERC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, ERC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. ERC 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. ERC declares that 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 ERC 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. ERC 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. ERC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ERC 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 ERC 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 ERC.

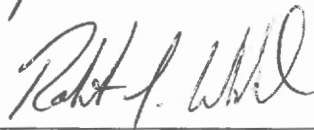
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after ERC has completed all of the requirements of the Order;
- b. ERC 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 ERC.

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

And it is so ORDERED this 11<sup>th</sup> day of July, 2017.



Robert J. Weld, Regional Director  
Department of Environmental Quality

----- (Remainder of Page Intentionally Blank) -----



Electroplate-Rite Corp. voluntarily agrees to the issuance of this Order.

Date: 6-1-2017 By: [Signature]

Commonwealth of Virginia

City/County of PULASKI

The foregoing document was signed and acknowledged before me this 1 day of

JUNE 2017, by B KEITH DICKERSON

[Signature]

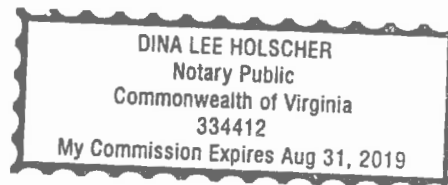
Notary Public

334412

Registration No.

My commission expires: 31 AUG 2019

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

1. Not later than 30 days after the effective date of this Order, ERC shall submit proof of annual refresher training for hazardous waste personnel in accordance with the requirements of 40 CFR § 265.16(c).
2. Not later than 30 days after the effective date of this Order, ERC shall submit proof that all containers of hazardous waste and universal waste stored at the Facility are kept closed in accordance with the requirements of 40 CFR § 265.173(a) and 40 CFR § 273.13(d)(1).
3. ■

|  
|  
|  
|  
|  
|  
|