COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
THE MILLWORK SPECIALIST, LLC
EPA ID No. VAR000517672

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 The Millwork Specialist, LLC, regarding The Millwork Specialist, LLC Henrico County 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. "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 20-80-120(A).

3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

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 Millwork Specialist, LLC Facility located at 3001 East Parham Road in Henrico County, 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. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

10. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

11. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

12. "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.

13. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

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. "TMS" means The Millwork Specialist, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. The Millwork Specialist, LLC is a "person" within the meaning of Va. Code § 10.1-1400.

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: Findings of Fact and Conclusions of Law

1. The Millwork Specialist, LLC owns and operates the Facility in Henrico County, Virginia. The Facility manufactures architectural woodwork. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. At the Facility, TMS generates mixtures of waste lacquer and waste paint that contain spent solvents, including xylene, acetone, and toluene, all of which are solid wastes. The mixtures containing spent xylene and acetone are F003 listed hazardous wastes, and the mixtures containing spent toluene are F005 listed hazardous wastes, as described in 40 CFR § 261.31. Certain mixtures containing spent solvents are also ignitable characteristic hazardous wastes (D001) as described in 40 CFR § 261.21. This hazardous waste is accumulated in containers at the Facility after its generation.

3. On June 23 and 24, 2009, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

    a. Department staff observed approximately twenty 55-gallon drums outside near a shed. One drum was labeled "Acrylic Lacquer Thinner". A TMS representative stated that some of the drums contained water, and others contained mixtures of spent solvents and waste paint or lacquer. TMS had not made a determination of whether the contents of each drum were hazardous. According to 40 CFR § 262.11, facilities must make a determination of whether a solid waste is hazardous at the time of generation.

    b. None of the drums observed were labeled with accumulation start dates or the words "Hazardous Waste", although 9 drums were later shipped off-site as hazardous waste to a permitted hazardous waste treatment facility. According to 40 CFR §262.34(a)(2) and (3), respectively, each container of hazardous waste be marked with the date that accumulation began and the words "Hazardous Waste" while on site.

    c. Department staff observed that the one drum labeled "Acrylic Lacquer Thinner" was leaking a dark, viscous substance. The vegetation between the leaking drum and the nearest stormwater drop inlet (5-6 feet away) was stained brown and dead. Analysis of soil samples from this area revealed concentrations of acetone and toluene. Other drums adjacent to the leaking drum were in varying stages of decay. 40 CFR §262.173(b) (as referenced by 40 CFR § 262.34(a)(1)(i)) states that "a container holding hazardous waste must not stored in a manner which may rupture the container or cause it to leak", and 40 CFR § 265.31 (as referenced by 40 CFR § 262.34(a)(4)) requires that facilities be maintained to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents .

d. The leaking drum was present on the site from at least May 15, 2009 to June 23, 2009. Until instructed to do so, TMS did not transfer the contents of the drum to a structurally sound container, delineate the extent of any release, or remove any contaminated soil. According to 40 CFR §265.171 (as referenced by 40 CFR §262.34(a)(1)(i)), if a container holding hazardous waste is not in good condition or begins to leak, the owner or operator must transfer the waste from this container to another that is in good condition. 40 CFR § 265.56(b) requires that whenever there is a release, the emergency coordinator must (among other actions) immediately identify the character, source, and extent of the release, assess possible hazards to human health or the environment, collect and contain waste, and ensure that it is disposed of properly.

e. From August 2008 through 2009, TMS generated in excess of 100 kg/month of F003, F005 and D001 hazardous waste. TMS made shipments of this waste in August 2008, December 2008, and May 2009; however TMS did not have an EPA identification number at that time. 40 CFR § 262.12(a) prohibits generators from offering hazardous waste for transportation without having first obtained an EPA identification number. On June 24, 2009, TMS submitted a RCRA Subtitle C Site Identification Form (received on June 26, 2009) that gave notice of regulated waste activity at the Facility as an SQG of hazardous waste. In response, DEQ issued TMS EPA identification number VAR000517672.

4. On November 10, 2009, based on the inspection and follow-up information, the Department issued Notice of Violation No. 2009-11-PRO-603 to the TMS for the violations described in paragraph C3, above.

5. On December 11, 2009, Department staff met with representatives of TMS to discuss the violations. TMS representatives indicated that the company now has procedures in place to comply with SQG requirements.

6. Based on the results of June 23 and 24, 2009 inspections and subsequent file review and the December 11, 2009 meeting, the Board concludes that TMS has violated 40 CFR §§ 262.11, 262.34(a)(2) and (3), 262.12(a), 262.173(b), 262.34(a)(1)(i), 262.34(a)(4),as described in paragraph C(3), above, and referenced by 9 VAC 20-60-262 and -265..

7. TMS submitted documentation that verifies that the drums observed on June 23 and 24, 2009 were characterized and properly disposed of. TMS contends that 8 of the 9 drums manifested and shipped as hazardous waste were non-hazardous, and that these 8 drums were shipped as hazardous waste as a caution. TMS contends that most of the drums on the site contained rain water.

8. In order for TMS to complete its return to compliance, DEQ staff and representatives of TMS 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 TMS, and TMS agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $20,000 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
June 1, 2011	$1,674 or balance
September 1, 2011	$1,666 or balance
December 1, 2011	$1,666 or balance
March 1, 2012	$1,666 or balance
June 1, 2012	$1,666 or balance
September 1, 2012	$1,666 or balance
December 1, 2012	$1,666 or balance
March 1, 2013	$1,666 or balance
June 1, 2013	$1,666 or balance
September 1, 2013	$1,666 or balance
December 1, 2013	$1,666 or balance
March 1, 2014	$1,666

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, the Department shall have the right to demand in writing full payment of the entire remaining balance under this order by TMS, and the entire remaining balance of the civil charge shall be immediately due and owing. TMS shall pay the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or of a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.

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. TMS 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 TMS for good cause shown by TMS, 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, TMS admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.

4. TMS 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. TMS 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 TMS 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. TMS 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. TMS shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. TMS 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 TMS 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 TMS. Nevertheless, TMS 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. TMS petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to TMS.

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

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, The Millwork Specialist, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8th day of APRIL, 2011.

Michael P. Murphy, Regional Director
Department of Environmental Quality

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The Millwork Specialist, LLC voluntarily agrees to the issuance of this Order.

Date: 2-24-11 By: _____, PRESIDENT
(Signature) (Title)
The Millwork Specialist, LLC

Commonwealth of Virginia
City/County of Henrico

The foregoing document was signed and acknowledged before me this 24th day of February, 2011, by Michael W. Karn who is President of The Millwork Specialist, LLC, on behalf of the corporation.

Susan Mead Schaffernoth
Notary Public

7270260
Registration No.

My commission expires: 9-30-13

Notary seal:

SUSAN MEAD SCHAFFERNOTH
COMMONWEALTH OF VIRGINIA
REG. NO. 7270260
EXPIRES 9-30-2013
NOTARY PUBLIC

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Registration**

No later than May 1, 2011, TMS shall submit an updated RCRA Subtitle C Identification Form (EPA Form No. 8700-12) to reflect that it is the owner and operator of the Facility.

2. **Container Management**

TMS shall manage all containers in accordance with the requirements of 40 CFR §§ 262.34 and 265.171.

a. **No later than May 1, 2011**, TMS shall submit photographs and documentary evidence demonstrating that the containers at the Facility are being maintained in good condition in accordance with the regulatory requirements.

b. TMS shall respond to any notices of deficiency with respect to the condition of its containers or its documentation in accordance with the notice.

3. **Assessment and Remediation**

No later than August 1, 2011, TMS shall submit an assessment of the hazardous waste released from the leaking drum. The assessment shall identify the character, exact source, amount, areal extent of the release, lateral extent of the release, and possible direct and indirect effects on the environment that did or may have resulted from the release. This assessment must consider both direct and indirect effects of the release. The assessment shall include a plan and schedule for removal and disposal of recovered waste, contaminated soil or surface water, and any other material that results from the release and a methodology for ensuring that the contaminated materials are removed from the area properly. TMS shall respond to any notices of deficiency provided by DEQ and make such requested changes as requested by DEQ with respect to the assessment, plan or schedule in accordance with the notice. Once approved, by DEQ the plan in the assessment shall be implemented in accordance with the schedule therein.

4. **Contact**

Unless otherwise specified in this Order, TMS shall submit all requirements of Appendix A of this Order to:

Allison Dunaway
Enforcement Manager
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060

Phone: (804) 527-5086
Fax: (804) 527-5106
Email:
Allison.Dunaway@deq.virginia.gov