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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800 Fax (703) 583-3821

www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural ResourcesDavid K. Paylor
DirectorThomas A. Faha
Regional Director

June 14, 2012

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**Mr. Donald Saulsgiver
7147 Barry Road
Alexandria, VA 22315

RE: Tax Parcel 83-A-41- Chesterfield Road, Ruther Glen

Dear Mr. Saulsgiver:

On October 31, 2011, and on March 21, 2012, the Virginia Department of Environmental Quality (DEQ) issued Notices of Violation (NOVs) to you.

DEQ wishes to resolve these NOVs by entering into a Consent Order with you. DEQ's proposed Consent Order, including Attachment A, is enclosed for your review. In addition to the proposed injunctive relief, the Consent Order includes a civil charge in the amount of \$89,868.05.

If you agree with the terms of the proposed Consent Order, please sign, date, notarize, and return the original Consent Order to Stephanie Bellotti's attention at the above address by June 28, 2012, for further processing. If you have any questions or wish to discuss the proposed Consent Order, please contact Ms. Bellotti, Regional Enforcement Specialist, Senior at (703) 583-3857.

Respectfully,

Sarah Baker
Regional Enforcement Manager

Enclosures (1)

AR300012



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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MR. DONALD SAULSGIVER
FOR
TAX PARCEL 83-A-41-CHESTERFIELD ROAD, RUTHER GLEN
VIRGINIA
VACESQG41106**

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 Mr. Donald Saulsgiver, regarding the drums located on Tax Parcel 83-A-41 on Chesterfield Road in Ruther Glen, 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. "CESQG" means a conditionally exempt small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month or a generator that accumulates more than 1000 kilograms at any time and must meet the other restrictions of 40 CFR § 261.5 and 9 VAC 20-60-261.
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 trailer containing drums located at Tax Parcel 83-A-41 on Chesterfield Road in Ruther Glen, Virginia, which is located in Caroline County.
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. "LQG" means large quantity generator of hazardous waste that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. See 40 CFR § 262.34 and § 265.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
13. "Property" means Tax Parcel 83-A-41 on Chesterfield Road, in Ruther Glen, Virginia.
14. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
15. "Responsible Party" means Mr. Donald Saulsgiver, currently a resident of Caroline County, Virginia. Mr. Donald Saulsgiver is a "person" within the meaning of Va. Code § 10.1-1400.
16. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2. This definition has not been adopted by the Commonwealth.

17. "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 or accumulates more than 6000 kilograms at any one time and meets other restrictions. *See* 40 CFR § 262.34(d).
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. Mr. Donald Saulsgiver has represented to DEQ that he is the owner of approximately 55, 55-gallon drums of solid and or hazardous waste being stored in a trailer at the Site in Caroline County Virginia. The Property is owned by R207 LLC, however, Mr. Saulsgiver has represented to DEQ that both the drums and the trailer on the Property are owned by him. The storage of waste at the Site is subject to the Virginia Waste Management Act and the Regulations.
2. On April 4, 2011, it was brought to the attention of DEQ and the Virginia Department of Emergency Management (VDEM) that there were waste drums located at the Site. VDEM took preliminary samples of the contents of the accessible drums to determine the imminent threat to human health and the environment. The results indicated that the drums contained petroleum products, possibly used oil, transmission fluid, waste fuel and solvents.
3. During a May 20, 2011 conversation with DEQ staff, and Environmental Protection Agency (EPA) staff, Mr. Saulsgiver indicated that he was the owner of the drums located at the Site. In addition, Mr. Saulsgiver later reiterated that he owned the drums in a letter to DEQ dated June 3, 2011, and in a phone conversation with DEQ on June 10, 2011.
4. On June 13, 2011, DEQ staff sent Mr. Saulsgiver an email regarding the VDEM sample results and a list of hazardous waste disposal companies. The email notified Mr. Saulsgiver that the waste would have to be characterized to determine whether the contents of the drums were hazardous or nonhazardous waste.
5. On July 29, 2011, DEQ staff met with Mr. Saulsgiver to discuss the proper identification and disposal of the waste drums at the Site. Mr. Saulsgiver agreed to have the drums sampled on August 3, 2011, and to properly dispose of them by the end of August. DEQ provided Mr. Saulsgiver with sampling requirements. DEQ staff also sent Mr. Saulsgiver an email requesting the results of these samples by October 28, 2011. Sample results were not provided to DEQ by October 28, 2011.

6. DEQ subsequently issued a Notice of Violation to Mr. Saulsgiver on October 31, 2011, citing failure to identify whether the contents of the drums stored at the Site are hazardous waste in accordance with 40 CFR 262.11.
7. 40 CFR 262.11 as referenced in 9 VAC 20-60-262 states that "a person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste..."
8. On January 5, 2012, DEQ staff received a phone call from Mr. Saulsgiver who notified DEQ that he planned to sample the drums on January 19, 2012. DEQ again notified Mr. Saulsgiver via email of the sampling requirements. No sampling results were received by DEQ.
9. On March 8, 2012, DEQ staff, VDEM staff, EPA staff, Mr. Saulsgiver's assistant, the Property owner, and the individual leasing the Property, met at the Property. VDEM staff assessed the condition of the drums in the trailer and used a portable hazardous material chemical detector to determine what types of liquid wastes were being stored in the drums. While onsite, DEQ staff made the following observations:
 - a. The waste drums have not been disposed of in a legal manner.
 - b. The generator of the solid waste has not determined whether or not the wastes in the drums are hazardous waste.
 - c. Based on observations made by VDEM staff, there appears to be hazardous waste in a trailer on the Property. Review of DEQ records indicated that Mr. Saulsgiver does not have a hazardous waste transporter permit nor is the Property permitted as a hazardous waste storage/disposal facility. Therefore, it appears as though the hazardous waste was transported and is being stored / disposed on the Property without a permit from the Director.
 - d. DEQ records indicate that neither Mr. Saulsgiver nor the Property has an EPA ID number.
 - e. The drums containing the hazardous waste appeared to be rusting, and some were oozing material onto the floor of the trailer.
 - f. Several of the drums containing the hazardous waste are open.
 - g. The drums are not labeled with an accumulation date nor are they labeled as hazardous waste.
 - h. The drums do not appear to be maintained to minimize the possibility of fire or release.

10. Va. Code §10.1-1418.1(A) states that, "it shall be the duty of all persons to dispose of their solid waste in a legal manner."
11. 40 CFR 262.11 as referenced in 9 VAC 20-60-262 states that "a person who generates a solid waste as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste..."
12. Va. Code §10.1-1426(A) states, that "no person shall transport, store, provide treatment for, or dispose of a hazardous waste without a permit from the Director."
13. 40 CFR 262.34(f) as referenced in 9 VAC 20-60-262 states that "a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste or offer his waste for transportation over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 CFR Parts 264 and 265 and the permit requirements of 40 CFR Part 270 unless he has been granted an extension to the 180 day (or 270 days if applicable) period..."
14. 40 CFR 262.12(a) as referenced in 9 VAC 20-60-262 states that "A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator."
15. 40 CFR 265.171 as referenced in 9 VAC 20-60-265 states that "If a container holding hazardous waste is not in good condition or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this part."
16. 40 CFR 265.173(a) as referenced in 9 VAC 20-60-265 states that "a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste. 40 CFR 265.173(b) as referenced in 9 VAC 20-60-265 states that "a container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak."
17. 40 CFR 262.34(a)(2) as referenced in 9 VAC 20-60-262 states that "The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;"
18. 40 CFR 262.34(a)(3) as referenced in 9 VAC 20-60-262 states that "While being accumulated on-site, each container and tank is labeled or marked clearly with words, "Hazardous Waste".
19. 40 CFR 265.31 as referenced in 9 VAC 20-60-265 states that "Facilities must be maintained and operated to minimize the possibility of a fire, explosion or any unplanned

sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.”

20. Subsequent to the March 8, 2012, site visit, DEQ issued an additional Notice of Violation on March 21, 2012, for the violations described in paragraphs C(10) through C(20) above.
21. Based on the results of the April 4, 2011, July 29, 2011, and March 8, 2012, site visits, the Board concludes that Mr. Saulsgiver has violated Va. Code § 10.1-1418.1(A), and §10.1 – 1426(A), 40 CFR 262.11 as referenced in 9 VAC 20-60-262, 40 CFR 262.34(f) as referenced in 9 VAC 20-60-262, 40 CFR 262.12(a) as referenced in 9 VAC 20-60-262, 40 CFR 265.171 as referenced in 9 VAC 20-60 -265, 40 CFR 265.173 as referenced in 9 VAC 20-60 -265, 40 CFR 262.34(a)(2) as referenced in 9 VAC 20-60-262, 40 CFR 262.34(a)(3) as referenced in 9 VAC 20-60-262, and 40 CFR 265.31 as referenced in 9 VAC 20-60-265, as described in paragraphs C(1) through C(21) above.
22. In order for Mr. Saulsgiver to complete his return to compliance, DEQ staff and Mr. Saulsgiver 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 Mr. Saulsgiver, and Mr. Saulsgiver agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$89,868.05 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall note that it is being made pursuant to this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Mr. Donald Saulsgiver for good cause shown by Mr. Donald Saulsgiver, 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, Mr. Donald Saulsgiver admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Mr. Donald Saulsgiver 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. Mr. Donald Saulsgiver 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 Mr. Donald Saulsgiver 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. Mr. Donald Saulsgiver 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. Mr. Donald Saulsgiver shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mr. Donald Saulsgiver 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 Mr. Donald Saulsgiver. Nevertheless, Mr. Donald Saulsgiver agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Mr. Donald Saulsgiver has completed all of the requirements of the Order;
 - b. Mr. Donald Saulsgiver 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 Mr. Donald Saulsgiver.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Donald Saulsgiver 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 Mr. Donald Saulsgiver 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. Any documents to be submitted pursuant to this Order shall be submitted by Mr. Donald Saulsgiver or an authorized representative of Mr. Donald Saulsgiver.
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, Mr. Donald Saulsgiver voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2012.

Thomas A. Faha Regional Director
Department of Environmental Quality

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

Mr. Donald Saulsgiver voluntarily agrees to the issuance of this Order.

Date: _____ By: _____
(Mr. Donald Saulsgiver)

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of
_____, 20____, by _____

Notary Public

Registration No.

My commission expires: _____

Notary seal: