



*Commonwealth of Virginia*

*VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY*

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Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director

September 6, 2024

Mr. Kenneth Bahr  
Cavalier Container, LLC  
2316 Highland Avenue  
Charlottesville, Virginia 22903  
Via Email: [975dump@gmail.com](mailto:975dump@gmail.com)

Mr. David L. Dallas, Registered Agent  
William Mullens  
323 2<sup>nd</sup> St, Suite 900  
Charlottesville, Virginia 22902

**Notice of Special Order Proceeding**

**DATE: October 3, 2024**

**TIME: 10:00 a.m.**

**CONFERENCE CALL INFORMATION:**

**CALL-IN NO.: (312) 757-3121**

**ACCESS CODE: 253-160-749**

**In re: Cavalier Container, LLC  
2969 Richmond Road, Troy, Virginia  
Unpermitted/Unregistered Facility**

Dear Mr. Bahr:

You are hereby notified that, pursuant to Virginia Code ("Va. Code") §§ 2.2-4019 and 10.1-1186, a Special Order Proceeding will be held on **October 3, 2024 at 10:00 a.m.** regarding Cavalier Container (the "Facility") located in Troy, Virginia. **The Special Order Proceeding will be held via conference call.** At the scheduled time, dial (312) 757-3121, and enter the Access Code 253-160-749 when requested. If you have any difficulty accessing the conference call, please call Michelle R. Callahan at 804-664-3893.

**PURPOSE**

The Special Order Proceeding will determine whether Cavalier Container, LLC has violated certain provisions of the Virginia Waste Management Act, the State Water Control Law, and applicable regulations and will determine the appropriateness of injunctive relief and a civil

penalty. The alleged violations are set forth in this Notice Letter. DEQ staff will be seeking a Special Order requiring Cavalier Container, LLC to comply with the above statutes and regulations at the Facility and pay the maximum civil penalty permitted under the law.

### **INFORMATION TO BE USED BY DEQ**

This letter notifies you of information upon which DEQ staff may rely to request the issuance of a Special Order. In addition to the information enclosed with this Notice Letter and labeled as "DEQ Exhibit Book," DEQ staff may also rely on other public documents in DEQ files. The enclosed information, the information in DEQ's case file, and the information presented by witnesses will be relied upon to ascertain the facts in this matter.

DEQ staff will also rely on applicable statutes, regulations, and DEQ guidance. In addition to the laws and regulations cited in this Notice Letter, DEQ may rely on other authorities. Full texts of statutes, regulations, and DEQ guidance can be obtained at <http://www.deq.virginia.gov/LawsRegulations.aspx> or <http://lis.virginia.gov/> (statutes and regulations) and <http://townhall.virginia.gov/L/GDocs.cfm> (DEQ guidance). Copies will be provided upon request.

### **ALLEGED VIOLATIONS AND LEGAL REQUIREMENTS**

On September 29, 2023, DEQ staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act, the State Water Control Law, and the applicable Regulations. Department staff made the following observations:

- a. Cavalier Container, LLC is managing and storing solid waste<sup>1</sup> at the Facility without a permit from the Director. Solid waste was observed stored<sup>2</sup> at the Facility in roll-off containers, outside on the ground, in storage containers, and in the main building. The solid waste observed included:
  - i. Approximately 10 roll-off dumpsters containing bags of household trash, carpet and rugs, lumber, pallets, fume hood, shelving, and metal.
  - ii. Located on the ground outdoors: fuel containers, drums, barrels with no containment, discolored or stained soil, vehicles, debris, and metal.
  - iii. Closed storage containers containing white goods (refrigerator, microwaves and air conditioners), metal shelving, and spray cans of lubricant, and lawn mowers.
  - iv. Approximately 100 five-gallon buckets containing unknown materials. Oil-stained concrete was observed at the base of an engine and near several buckets located in the building.

***Legal Requirements: Va. Code § 10.1-1408.1(A)(G) of the Code of Virginia states in part: No person shall operate a facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director.***

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<sup>1</sup> Solid waste means any of those materials defined as "solid waste" in 9 VAC 20-81-95.

<sup>2</sup> Storage means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.

**9 VAC 20-81-40 states in part: No person shall operate a facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director. Any person who violates this section shall immediately cease the activity of improper management and the treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, or closure in place.**

- b. Cavalier Container, LLC has not characterized<sup>3</sup> solid waste located at the Facility as hazardous waste.<sup>4</sup> DEQ does not have record of a hazardous waste permit that allows receipt of hazardous waste from off-site. DEQ staff did not observe documentation regarding generation dates or waste characterization.<sup>5</sup> DEQ does not have record of notification or documentation that Cavalier Container, LLC has determined its hazardous waste generator category. Hazardous waste was observed stored at the Facility without a permit from the Director. The hazardous waste observed included:
- i. Aerosol cans, waste paint, spent solvent, and solvent contaminated wipes, fluorescent lamps, batteries, and mercury containing equipment.
  - ii. Approximately ten 55-gallon drums and approximately 100 five-gallon buckets containing unknown material were observed in the main building and located outdoors on the property.
  - iii. The various containers were not labeled indicating the hazards of the contents or labeled with the words “Hazardous Waste”.
  - iv. DEQ did not observe an inventory system, generation dates, receipt dates, and shipping dates.

***Legal Requirements:* Va. Code § 10.1-1426(A) states “No person shall store, provide treatment for, or dispose of a hazardous waste without a permit from the Director.”**

**9 VAC 20-60-262 incorporates by reference 40 CFR 262 which states in part: A person who generates a solid waste must make an accurate determination as to whether that waste is a hazardous waste to ensure wastes are properly managed according to applicable RCRA regulations. A generator must determine which**

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<sup>3</sup> For a material to be classified as a hazardous waste, it must first be a solid waste. The first step in the hazardous waste identification process is determining if a material is a solid waste. The second step in this process examines whether the waste is specifically excluded from regulation as a solid or hazardous waste. Once a generator determines that their waste meets the definition of a solid waste, they investigate whether the waste is a listed or characteristic hazardous waste.

<sup>4</sup> Hazardous waste means a waste with properties that make it dangerous or capable of having a harmful effect on human health or the environment.

<sup>5</sup> EPA has studied and listed as hazardous hundreds of specific industrial waste streams. These wastes are described or listed on four different lists that are found in the regulations at Part 261, Subpart D. EPA also decided that the presence of any characteristic of hazardous waste should be detectable by using a standardized test method or by applying general knowledge of the waste's properties. EPA provided a screening mechanism that waste handlers must apply to all wastes from all industries. The characteristics provide a more complete and inclusive means of identifying hazardous wastes than do the hazardous waste listings. The four characteristics of hazardous waste are: ignitability, corrosivity, reactivity, and toxicity.

**provisions of this part are applicable to the generator based on the quantity of hazardous waste generated per calendar month.**

**40 CFR 262.15(a)(5)(i)(ii) states in part that: “A generator must mark or label its container with the words “Hazardous Waste” and “an indication of the hazards of the contents.”**

- c. Cavalier Container, LLC is not permitted under a Virginia Pollution Discharge Elimination System (VPDES) permit, including the VPDES General Permit for Discharges of Stormwater Associated with Industrial Activity<sup>6</sup>. DEQ staff observed industrial activity exposed to stormwater occurring at the Facility. A stormwater detention pond is located at the southeast corner of the property. Stormwater associated with the impervious portions of the Facility travel to the detention pond prior to discharging to state waters. DEQ does not have a record of VPDES coverage for Cavalier Container, LLC.

***Legal Requirements:* Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.**

**9 VAC 25-31-50 states that except in compliance with a VPDES permit, or another permit, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.**

**Va. Code § 62.1-44.5 states that: “Except in compliance with a VPDES permit, or another permit, issued by the department or a general permit issued as a regulation adopted by the board or other entity authorized by the board or department, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”**

### **RECOMMENDED DECISION, RELIEF AND CIVIL PENALTY**

DEQ staff will request a Special Order to compel Cavalier Container, LLC to comply with the Virginia Waste Management Act, the State Water Control Law, and applicable regulations. Specifically, DEQ staff will request a Special Order requiring Cavalier Container, LLC to:

1. Within 30 days of the effective date of the Special Order, pay the maximum civil penalty allowed by law. Pay attorneys’ fees of 30% of the amount outstanding should DEQ have to refer collection of the civil penalty to the Department of Law (Office of the Attorney General).
2. Immediately cease all unpermitted waste management activities at the Facility. No unpermitted waste management activities shall resume at the Facility until all appropriate permits are obtained from DEQ.

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<sup>6</sup> Industrial activity means the categories of facilities identified in 9VAC25-151-10. Definitions.

3. Within 60 days of the effective date of the Order, submit to DEQ for review and approval, a corrective action plan to address the violations described in the Special Order. The corrective action plan shall include, but not limited to:
  - a. A detailed narrative description of the actions that will be taken to make an accurate determination as to whether waste is a hazardous waste.
  - b. The plan and schedule to complete removal and proper disposal of all waste from the property.
  - c. Provide the name(s) of the permitted facility authorized to accept the waste from this Facility for disposal of the waste.
  - d. A detailed narrative description of the plan and schedule to achieve and maintain consistent compliance with regulatory requirements of the Virginia Pollutant Discharge Elimination System (“VPDES”) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity at 9 VAC 25-151-10 *et seq.*, the Virginia Waste Management Regulation at 9 VAC 20-70-10 *et seq.*, and VAC 20-81-10 *et seq.*, the Virginia Hazardous Waste Management Regulations (“VHWMR”) at 9 VAC 20-60-12 *et seq.*
4. Respond to any DEQ comments regarding the corrective action plan within 14 days. Upon approval by DEQ the corrective action plan will be incorporated by reference into the Special Order and become enforceable under the Special Order.
5. Within 30 days of completion of all corrective action, notify DEQ of completion of all corrective action and schedule an inspection with DEQ staff to verify return to compliance.
6. Complete all corrective actions no later than January 1<sup>st</sup>, 2025.

## **PROCEDURES**

You may participate in the conference call yourself or by counsel or other qualified representative pursuant to Va. Code § 2.2-4019. At this proceeding, Cavalier Container, LLC will be able to present factual data, argument, or proof in connection with this case. DEQ staff may rely on the enclosed documents, other documents in its files, and statements of DEQ staff to substantiate the alleged violations. A presiding officer will hear the evidence in this case and prepare an independent Findings of Fact and Conclusions of Law and a draft Order for the Director’s review. The Director will then issue a decision in this matter. If the Director issues a Special Order under Va. Code § 10.1-1186, it may include both injunctive relief and a civil penalty.

**Be advised that if you fail to attend or appear without good cause at an informal fact-finding proceeding conducted pursuant to Va. Code § 2.2-4019, the presiding officer may issue a default order regarding the subject of this notice.** If a default order is issued, the presiding officer may conduct all further proceedings necessary to complete the adjudication and shall determine all issues in the adjudication, including those affecting you. Further, an order may be issued against you based on any admissions or other evidence without notice to you.

You will be notified of the results of the proceeding in accordance with Va. Code § 2.2-4019 and have the right to appeal any adverse decision in accordance with Va. Code § 2.2-4026.

Michelle Callahan will represent DEQ at this proceeding. Please contact Michelle Callahan at 804-664-3893 or [michelle.callahan@deq.Virginia.gov](mailto:michelle.callahan@deq.Virginia.gov) within ten (10) calendar days of the receipt of this letter to indicate whether you will be represented at this Special Order Proceeding by counsel or if you are unable to participate by conference call at the scheduled time.

DEQ encourages settlement of this matter at any time if such settlement is consistent with the provision and objectives of the applicable laws and regulations. You may request a settlement conference with DEQ staff to discuss the allegations in the notice. A request for a settlement conference or the opportunity to submit documentation will not affect the scheduled proceeding unless the parties and the presiding officer otherwise agree. If you wish to arrange an informal settlement conference or discuss the opportunity to submit documentation, please call Michelle Callahan within ten (10) calendar days of receipt of this notice.

If you have any questions or require assistance, please contact Michelle Callahan at 804-664-3893 or [michelle.callahan@deq.Virginia.gov](mailto:michelle.callahan@deq.Virginia.gov).

Sincerely,

A handwritten signature in black ink that reads "Lee Crowell". The signature is written in a cursive style with a large, stylized "L" and "C".

Lee Crowell  
Director, Division of Enforcement

Enclosure