COMMONWEALTH of VIRGINIA

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO BGF INDUSTRIES, INC. FOR THE BGF INDUSTRIES, INC. ALTATVISTA, VA FACILITY EPA ID No. VAD119071314

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 BGF Industries, Inc., regarding the BGF Industries, Inc. Altavista, Virginia 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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

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 BGF Industries, Inc. Facility located at 401 Amherst Avenue in Altavista, 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. "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).

10. "BGF" means BGF Industries, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. BGF is a "person" within the meaning of Va. Code § 10.1-1400.

11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

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

13. "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.

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

15. "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).

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. BGF owns and operates the Facility in Altavista, Virginia. The Facility is a textile manufacturing facility including weaving and finishing for the aircraft and construction industries as well as Kevlar manufacturing for the U.S. military. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. BGF submitted an initial RCRA Subtitle C Site Identification Form ("RCRA Form"), received October 28, 1986, which gave notice of regulated waste activity at the Facility as a SQG of hazardous waste. BGF was issued EPA ID No. VAD119071314 for the Facility. BGF submitted another RCRA Form on April 30, 2001 that gave notice of regulated waste activity at the Facility as a LQG of hazardous waste with waste types D001, D002, D007, D018, D039, D040, F002, and U188. Most recently, BGF submitted a RCRA form on April 10, 2014 that only contains D007 waste code (which is correct for its current operations.

3. At the Facility, BGF generates hazardous waste liquid, N.O.S. (chromium), waste paint related material, and aerosol can waste which are solid wastes. These solid wastes are also hazardous wastes with waste codes D007 and D001, respectively. This hazardous waste is accumulated in containers at the Facility after their generation. Regulated waste generated at the facility includes universal waste lamps and universal waste batteries.

4. On October 30, 2014, 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.

5. BGF punctures its waste aerosol cans with a drum-top puncturing device mounted atop a 55-gallon container that is designated as a satellite accumulation area in the "Shop Storage Area". The ignitable liquid contents of this container are transferred out of the container and disposed as D001 hazardous waste. BGF had not made a hazardous waste determination of the sludge, about five gallons, remaining in the container after liquid transfer on the day of the DEQ inspection. 40 CFR § 262.11 requires a person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using either analytical testing or generator knowledge.

6. BGF accumulated on-site a container of aerosol sludge waste for 129 days until it was characterized and subsequently disposed of as hazardous waste. 40 CFR 262.34(b), states that a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and it 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 90-day period.

7. BGF was accumulating waste aerosol cans, in a bucket, in the "Supply Room". The "Supply Room" bucket was not marked as "Hazardous Waste". 40 CFR 262.34(c)(1) allows a generator to accumulate in a container, near the point of generation hazardous waste and requires the generator to mark the container with the words "Hazardous Waste".

8. BGF did not have the copy of the manifest signed by the disposal facility representative in its files for one off-site shipment of hazardous waste in February 2014. 40 CFR 262.40 (a) requires that a generator must keep a signed copy from the designated facility which received the waste as a record for at least three years from the date the waste was accepted by the initial transporter.

9. The 55-gallon container equipped with the aerosol can puncturing device located in the "Shop Storage Area" (satellite accumulation area) was not labeled with the words "Hazardous Waste" or other words identifying its contents. 40 CFR 262.34(c)(1)(ii) allows a generator to accumulate as much as 55 gallons of hazardous waste at a satellite accumulation point as long as he marks his containers either with the words "Hazardous Waste", or with other words that identify the contents of the containers.

10. The boxes containing spent lamps were not labeled with the words "Universal Waste - Lamps" or "Waste Lamps" or "Used Lamps." 40 CFR § 273.14(e) requires that each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste – Lamps", "Used Lamps", or "Waste Lamps".

11. The Universal Waste – Lamps were accumulating in cardboard boxes that were not being kept closed as required. Furthermore, there were 10 u-shaped fluorescent lamps that were not being kept in a structurally-sound container as required. 40 CFR § 273.13(d)(1) requires that a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

12. BGF did not have the 55-gallon drum of used oil, located in the "Oil Room", labeled with the words, "Used Oil" as required. 40 CFR 279.22(c) requires that containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil".

13. BGF did not have a written training plan, as required. Both introductory and refresher training are given to employees but the types and amount of training to be given is not institutionalized in a written plan. 40 CFR 262.34(a)(4), which references 40 CFR 265.16(d), requires that the owner or operator must maintain the following documents and records at the facility, (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 related to hazardous waste management.

14. On December 16, 2014, based on the inspection and follow-up information, the Department issued Notice of Violation No. NOV-14-12-BRRO-001 to BGF for the violations described in paragraphs C(5) through C(13), above.

15. Based on the results of the October 30, 2014 inspection and the documentation submitted on November 6, 2014, November 11, 2014, and January 20, 2015, the Board concludes that BGF has violated 40 CFR § 262.11, 40 CFR 262.34(b), 40 CFR 262.34(c)(1), 40 CFR 262.40 (a), 40 CFR 262.34(c)(1)(ii), 40 CFR § 273.14(e), 40 CFR § 273.13(d)(1), 40 CFR 279.22(c), and 40 CFR 262.34(a)(4), as described in paragraphs C(5) through C(13), above.

16. BGF has submitted documentation that verifies that the violations described in paragraphs C(5) through C(13), 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 BGF, and BGF agrees to pay a civil charge of **$17,900** within 30 days of the effective date of the Order in settlement of the violations cited in 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

BGF shall include its Federal Employer Identification Number (FEIN) 56-1600845 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 BGF for good cause shown by BGF, 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, BGF admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. BGF 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. BGF 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 BGF 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. BGF 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. BGF shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BGF 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 BGF. Nevertheless, BGF 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 BGF has completed all of the requirements of the Order;

    b. BGF 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 BGF.

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

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, BGF Industries, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 22nd day of July, 2015.

Robert J. Weld, Regional Director
Department of Environmental Quality

BGF Industries, Inc. voluntarily agrees to the issuance of this Order.

Date: 6/3/15 By: _____, Plant Manager
Rodney Niblett
BGF Industries, Inc.

Commonwealth of Virginia
City/County of Campbell

The foregoing document was signed and acknowledged before me this 3 day of June, 2015, by Rodney Niblett who is a Plant Manager of BGF Industries, Inc., on behalf of the corporation.

Sherry Graham
Notary Public

7617414
Registration No.

My commission expires: 2/28/2018

Notary seal: