



**COMMONWEALTH of VIRGINIA**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

PIEDMONT REGIONAL OFFICE

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**VIRGINIA WASTE MANAGEMENT BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
AMSTED RAIL COMPANY, INC.  
EPA ID VAD003121597**

**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 Amsted Rail Company, Inc., for the purpose of resolving violations of the Virginia Waste Management Act and the Regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Amsted Rail" means Amsted Rail Company, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Amsted Rail is a "person" within the meaning of Va. Code § 10.1-1400.
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. "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" means Amsted Rail Company (EPA ID VAD003121597) a business that manufactures railroad bearings using steel, located at 2580 Frontage Road, Petersburg, Virginia, which is owned and operated by Amsted Rail Company, Inc.
7. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
8. "LQG" means a 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).
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 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.
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. "Va. Code" means the Code of Virginia (1950), as amended.

16. "VAC" means the Virginia Administrative Code.
17. "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. Amsted Rail owns and operates the Facility in Petersburg, Virginia. The Facility is a business that manufactures railroad bearings using steel. The Facility consists of five plants (1-5), 1 R&D facility, and an on-site Wastewater Treatment Plant. Plant processes include Machining, Heat Treating, Grinding, Roller Grinding, Phosphating, Rubber Application, Rubber Presses, Spray Booths, Forging, Rolling and Metal Pressing. Four of the five plants have their own hazardous waste accumulation areas, and the wastewater treatment plant has a hazardous waste accumulation area. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. On July 29, 2008, Amsted Rail submitted to EPA a RCRA Subtitle C Site Identification Form of Regulated Waste Activity, notifying EPA it was the new owners of Brenco, Inc., and stating that the name change to Amsted Rail would be effective October 1, 2008. Amsted Rail, as Brenco Inc., was issued EPA ID No. VAD003121597 on August 13, 2008 for the Facility as new owners.
3. At the Facility, Amsted Rail generates waste coolant, plant trash, propane cylinders, and wastewater treatment sludge which are Solid Wastes. It also generates the following Solid Waste which are listed as Hazardous Waste: waste paint thinner, waste aerosol cans, waste kerosene, adhesive + petroleum distillates, waste calcium nitrate, waste zinc nitrate (D001 listed as ignitable wastes); corrosive liquids, waste sodium hydroxide (D002 listed as corrosive wastes); Ni/Cd Batteries (D002, D006 listed as corrosive waste and exhibits toxicity characteristics); benzene, cresol (D18, D026 listed as a solid waste that exhibit toxicity characteristics); waste sol-u-dry contains barium (D005 listed as a solid waste that exhibits toxicity characteristics); waste mercury from broken lamps (D009 listed as a solid waste which exhibits toxicity characteristics); unused acetone, xylene (D001, F003, U002, U239 listed as ignitable and acutely ignitable toxic waste); waste isopropanol/dichlorofluoromethane (D001, F002 listed as an ignitable toxic waste), and other waste corrosive liquids (F003, D001, D002 listed, which are acutely ignitable and corrosive toxic wastes) as described in 40 CFR 261.21, 40 CFR 261.22, 40 CFR 261.24, 40 CFR 261.31, and 40 CFR 261.33. This Hazardous Waste is accumulated in containers at the Facility after its generation.
4. On February 17, 2016, Department staff conducted a compliance evaluation inspection (CEI) at the Facility for compliance with the requirements of the

Virginia Waste Management Act and Regulations. Based on the inspection and records review, Department staff made the following observations:

- a. In January 2016, Amsted Rail failed to notify the Department of the change in status to a LQG.

9 VAC 20-60-315.D states: Anyone who becomes a large quantity generator shall notify the Department in writing immediately of this change in status and document the change in the operating record,

- b. On January 11, 2016, Amsted Rail failed to properly characterize a shipment of wastewater as D002 Hazardous Waste. The designated receiving facility rejected the shipment for treatment and returned the shipment of improperly characterized wastewater to Amsted Rail by the transporter.

40 CFR Part 262.11 states: A person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method:..... (d) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 267, 268, and 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.

- c. According to Facility representatives, Amsted Rail had not attempted to make arrangement with local hospitals to familiarize them with the types of Hazardous Waste being handled at the Facility.

40 CFR Part 265.37 states: the owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at this Facility and the potential need for the services of these organizations: (4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the Facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the Facility.

- d. DEQ staff reviewed the Facility's Spill Prevention, Control and Countermeasure Plan and Crisis Management Plan, both of which contain a portion of the elements necessary to constitute a Contingency Plan. At the time of the inspection, the Facility was not able to provide documentation that the most recent copy of the Contingency Plan was submitted to local hospitals.

40 CFR 265.53 [as referenced by 9 VAC 20-60-265] states: Copies of Contingency Plan – A copy of the Contingency Plan and all revisions to the plan must be: (a) maintained at the Facility; and (b) submitted to all local police departments, fire departments, hospitals, and State and local

emergency response teams that may be called upon to provide emergency services.

- e. The Contingency Plan does not describe arrangements agreed to by local hospitals pursuant to 265.37.

40 CFR 265.37 [as referenced by 9 VAC 20-60-265] states: Arrangements with Local Authorities (a) The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations: (1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes; (2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority; (3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and (4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and types of injuries or illnesses which could result from fires, explosions, or releases at the facility. (b) Where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

40 CFR 265.52(c) states: the Plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to 265.37.

5. On March 29, 2016, DEQ issued Notice of Violation (NOV) No. 2016-03-PRO-601 to Amsted Rail for the violations described in paragraph C(4), above.
6. On May 5, 2016, DEQ met with representatives of Amsted Rail to discuss the Regulations and the violations observed by DEQ staff during the CEI at the Facility.
7. By email dated May 16, 2016, Amsted Rail attached a letter and notification form dated May 16, 2016, notifying the Department that Amsted Rail had become a LQG in January 2016.
8. By letter dated May 16, 2016, Amsted Rail submitted additional information in response to the violations cited in the NOV. Amsted Rail stated the company: a) had implemented procedures to test the pH to properly characterize the waste of

each waste load prior to shipment; b) had contacted the local hospital and submitted site plans, Safety Data Sheets (SDSs) of hazardous waste, evacuation routes, and emergency contact information, and scheduled a site visit; c) will create and implement a contingency plan in the event that Amsted Rail becomes a LQG, and provide the most recent plan to the local hospital; and d) will describe arrangements agreed to by the local hospital as to the types of injuries or illnesses which could result from incidents at the Facility.

9. Based on the results of the February 17, 2016 inspection, and the May 5, 2016 meeting, the Board concludes that Amsted Rail has violated 9 VAC 20-60-315.D, 40 CFR 262.11, 40 CFR 265.37, 40 CFR 265.52(c), and 40 CFR 265.53, as described in paragraph C(4), above.
10. On July 5, 2016, DEQ notified Amsted Rail by letter that based on DEQ staff review of submitted documentation, Amsted Rail had implemented sufficient corrective action to achieve compliance with the violations cited in the NOV. The violations are now resolved and no further action is required at this time by Amsted Rail.

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

Accordingly, by virtue of the authority granted it in Va. Code §10.1-1455, the Board orders Amsted Rail, and Amsted Rail agrees to:

1. Pay a civil charge of \$ **15,575** 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 shall be delivered to:

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

Amsted Rail 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Amsted Rail shall be liable for attorneys' fees of 30% of the amount outstanding.

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

1. The Board may modify, rewrite, or amend the Order with the consent of Amsted Rail for good cause shown by Amsted Rail, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-400 *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, Amsted Rail admits to 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. Amsted Rail 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. Amsted Rail declares it has received fair and due process under the Administrative Process Act and 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 Amsted Rail 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. Amsted Rail 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 other such occurrences. Amsted Rail shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Amsted Rail 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 Amsted Rail 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 Amsted Rail. Nevertheless, Amsted Rail 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 Amsted Rail has completed all of the requirements of the Order.
  - b. Amsted Rail 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 Amsted Rail.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Amsted Rail 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 Amsted Rail 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 the Order.

13. Any documents to be submitted pursuant to this Order shall also be submitted by Amsted Rail or an authorized representative of Amsted Rail.
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, covenant, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Amsted Rail Company, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28 day of SEPTEMBER, 2016.

  
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Michael P. Murphy, Regional Director  
Department of Environmental Quality

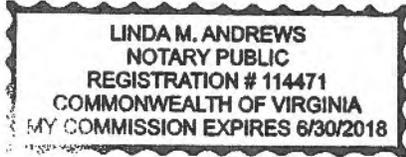
Amsted Rail Company, Inc. voluntarily agrees to the issuance of this Order.

Date: 12 Aug 16 By: *McIntyre R. Louthan III*, COO - GLOBAL BEARING OPS  
(Person) (Title)  
Amsted Rail Company, Inc.

Commonwealth of Virginia  
City/County of Petersburg

The foregoing document was signed and acknowledged before me this 12 day of  
August, 2016, by McIntyre R. Louthan III who is  
COO Global Bearing Ops of Amsted Rail Company, Inc., on behalf of the  
(Name)  
of the corporation.

*Linda M. Andrews*  
Notary Public



114471  
Registration No.

My commission expires: 6/30/2018

Notary seal: