COMMONWEALTH of VIRGINIA

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NORTHERN REGIONAL OFFICE
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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO BLUE RIDGE ARSENAL, INC. FOR BLUE RIDGE ARSENAL EPA ID No. VAD988220687

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 Blue Ridge Arsenal, Inc. regarding the Blue Ridge Arsenal 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. "Blue Ridge" means Blue Ridge Arsenal, Inc. a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Blue Ridge Arsenal, Inc. 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" or "Site" means the Blue Ridge Arsenal Facility located at 14725-K Flint Lee Road in Chantilly, 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. "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. "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.

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. Blue Ridge operates the Facility in Chantilly, Virginia. The Facility is a retail gun shop and an indoor target range. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. The former owner of Blue Ridge submitted a RCRA Subtitle C Site Identification Form dated July 30, 1992, that gave notice of regulated waste activity at the Facility as an SQG of hazardous waste. Blue Ridge was issued EPA ID No. VAD988220687 for the Facility. In a subsequent form received July 11, 2013, Blue Ridge gave notice as an LQG of hazardous waste.

3. At the Facility, Blue Ridge generates lead contaminated debris, such as air filters, Personal Protective Equipment (PPE), and decontamination materials, which are solid wastes. Spent lead projectiles and ammunition casings are recycled as scrap metal. Lead contaminated filters and lead contaminated debris are also a D listed hazardous waste as described in 40 CFR § 261.24 for toxicity characteristics.

4. On July 11, 2013, 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. The Facility's clean up standard operating procedures indicate that cardboard shreds are swept from the floor of the range and placed in the trash. PPE worn by staff members that sweep the range are also thrown in the trash. Air monitoring conducted by the Facility indicates that lead contamination is a concern during clean-up. The Facility provided no evidence that a hazardous waste determination was made for these materials.

    b. Used florescent lamps containing mercury were disposed of in a dumpster when burned out and removed from fixtures. The Facility provided no evidence that a hazardous waste determination was made for these materials. The lamps were not stored in closed containers and lacked start accumulation dates and labeling to identify the contents as universal waste.

c. Disposal documentation indicates that Blue Ridge typically generates less than 2,200 pounds of hazardous waste per month and operates as an SQG.

d. A Facility Disposal Manifest indicates that 3,000 pounds of hazardous waste was disposed on August 3, 2010. Blue Ridge indicated that this waste was generated the day or two prior as a result of replacing the air ventilation system. Notification of change in generator status was provided on July 11, 2013. DEQ records do not indicate that the Facility paid the 2010 large quantity generator fee by October 1, 2011. The fee was mailed to DEQ on October 22, 2013.

e. Information available during the inspection did not to indicate that the Facility maintains a record of routine tests or inspections of Facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment.

f. The Facility did not provide any documentation describing agreements agreed to by local emergency authorities.

g. Emergency contact information was not evident near the Facility telephone and information provided did not clearly identify the emergency coordinator.

h. DEQ records do not include a notification from the facility indicating the exact location of hazardous waste accumulation areas.

i. Blue Ridge provided no evidence that they had developed a training program to ensure staff was familiar with handling hazardous waste.

j. Blue Ridge did not appear to have a contingency plan or other alternative plan which documents the facilities emergency response procedures.

5. 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.

6. 40 CFR 265.33 as incorporated into 9 VAC 20-60-265 states that all facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency. A record of tests or inspections will be maintained on a log at the facility or other reasonably accessible and convenient location.

7. 40 CFR 265.37 as incorporated into 9 VAC 20-60-265 states that 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 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 the types of injuries or illness which could result from fires, explosions, or releases at the facility.

8. 40 CFR 262.34(d)(5)(i) and (ii) as incorporated into 9 VAC 20-60-262 states at all times there must be at least one employee either on the premises or on call with the responsibility for coordinating all emergency response measures specified in paragraph (d)(5)(iv) of this section.

9. 9 VAC 20-60-262.B.8 and 9 VAC 20-60-1284.A states that in addition to the requirements of this section, large quantity generators are required to pay an annual fee.

10. 9 VAC 20-60-315.D states that 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. Any large quantity generator who ceases to be a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record.

11. 9 VAC 20-60-262.B.4 states that for accumulation areas established before March 1, 1988, a generator who is not otherwise exempted by 40 CFR 261.5 shall notify the department of each location where he accumulate hazardous waste in accordance with 40 CFR 262.34 by March 1, 1988. For accumulation areas established after March 1, 1988, he shall notify the department and document in the operating record that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34 prior to or immediately upon the establishment of each accumulation area. In the case of a new generator who creates such accumulation areas after March 1, 1988, he shall notify the department at the time the generator files the Notification of Hazardous Waste Activity that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34. This notification shall specify the exact location of the accumulation area at the site.

12. 40 CFR 262.34(d)(5)(iii) as incorporated into 9 VAC 20-60-262 states that the generator must ensure that all employees are thoroughly familiar with proper waste handling and

emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

13. 40 CFR 265.16(a)(1) as incorporated into 9 VAC 20-60-265 states that facility personnel must successfully complete a program of classroom instruction or on the job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this section.

14. 40 CFR 265.51(a) as incorporated into 9 VAC 20-60-265 states each owner or operator must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

15. 40 CFR 273.13(d) states that a small quantity of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment as follows: (1) 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 and package must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions...

16. 40 CFR 273.14 states that a small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below...(e)Each lamp or container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste-Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

17. 40 CFR 273.15(c) states that a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

18. On September 6, 2013, based on the inspection and follow-up information, the Department issued a Notice of Violation to Blue Ridge for the violations described in paragraphs C(3) through C(17) above.

19. On September 25, 2013, Blue Ridge submitted a written response to the NOV detailing the steps that Blue Ridge has taken to come back into compliance.

20. On October 3, 2013, DEQ sent Blue Ridge a Partial Return to Compliance letter requesting additional documentation to confirm compliance. This additional documentation was submitted to DEQ on October 22 and 23, 2013.

21. On November 7, 2013, Department staff met with representatives of Blue Ridge to discuss the violations, including Blue Ridge's written response.

22. Based on the results of July 11, 2013, inspection, the November 7, 2013 meeting with DEQ, and correspondence submitted by Blue Ridge to DEQ on September 25, 2013 and October 23, 2013, the Board concludes that Blue Ridge has violated 40 CFR 262.11, 40 CFR 265.33, 40 CFR 265.37(a), 40 CFR 262.34(d)(5)(i) and (ii), 9 VAC 20-60-315.D, 9 VAC 20-60-262.B.8, 9 VAC 20-60-1284.A, 9 VAC 20-60-262.B.4, 40 CFR 262.34(d)(5)(iii), 40 CFR 265.16 (a)(1), 40 CFR 265.51(a), 40 CFR 273.13(d), 40 CFR 273.14, and 40 CFR 273.15(c) as described in paragraphs C(3) through C(17), above.

23. Blue Ridge has submitted documentation that verifies that the violations described in paragraphs C(3) through C(17) 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 Blue Ridge Arsenal, Inc. and Blue Ridge Arsenal, Inc. agrees to pay a civil charge of $3,511.50 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

Blue Ridge Arsenal, Inc. 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, Blue Ridge Arsenal, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Blue Ridge Arsenal, Inc. for good cause shown by Blue Ridge Arsenal, Inc., 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, Blue Ridge Arsenal, Inc. admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact, and conclusions of law in this Order.

4. Blue Ridge Arsenal, Inc. 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. Blue Ridge Arsenal, Inc. 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 Blue Ridge Arsenal, Inc. 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. Blue Ridge Arsenal, Inc. 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. Blue Ridge Arsenal, Inc. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Blue Ridge Arsenal, Inc. 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 Blue Ridge Arsenal, Inc..

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after Blue Ridge Arsenal, Inc. has completed all of the requirements of the Order;

    b. Blue Ridge Arsenal, Inc. 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 Blue Ridge Arsenal, Inc..

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

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, Blue Ridge Arsenal, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 1st day of August, 2014.

Thomas A. Faha, Regional Director
Department of Environmental Quality

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Blue Ridge Arsenal, Inc. voluntarily agrees to the issuance of this Order.

Date: 6/18/14 By: _____, PRESIDENT
(Person) (Title)
[Blue Ridge Arsenal, Inc.]

Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 18 day of June, 2014, by Earl Curtis who is president of Blue Ridge Arsenal, Inc. on behalf of the corporation.

Jack Smalley
Notary Public

255898
Registration No.

My commission expires: March 31, 2017

Notary seal:

COMMONWEALTH OF VIRGINIA
JACK V. SMALLEY
NOTARY PUBLIC
MY COMMISSION NUMBER 255898