



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Blue Ridge Regional Office

www.deq.virginia.gov

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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO**

**FEDERAL-MOGUL CORPORATION
FOR
FEDERAL-MOGUL CORPORATION BLACKSBURG PLANT
EPA ID No. VAD054039961**

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 Federal-Mogul Corporation, 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. "<90-day Accumulation Area" means an area used for the accumulation of hazardous waste by a generator on-site for 90 days or less without a permit or without having interim status, provided that certain additional requirements specified at 40 CFR § 262.34(a)(1) are met.
2. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
3. "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.

4. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
5. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
6. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled, as defined by 40 CFR § 260.10.
7. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
8. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
9. "Facility" or "Site" means the Federal-Mogul Corporation Blacksburg Plant, located at 300 Industrial Park Road in Blacksburg, Virginia.
10. "FMC" means the Federal-Mogul Corporation, a company authorized to do business in Virginia. Federal-Mogul Corporation is a "person" within the meaning of Va. Code § 10.1-1400.
11. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
12. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
13. "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).
14. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
15. "Order" means this document, also known as a Consent Order.
16. "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 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.

17. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
18. "Storage" means the holding of solid or hazardous waste for a temporary period, at the end of which the waste is treated, disposed of, or stored elsewhere, as defined by 40 CFR § 260.10 and 9 VAC 20-81-10, as applicable.
19. "Universal Waste" means any of the hazardous wastes meeting the definition provided in 40 CFR § 273.9 that are subject to the universal waste requirements of 40 CFR Part 273, including batteries as described at 40 CFR § 273.2, pesticides as described at 40 CFR § 273.3, mercury-containing equipment as described at 40 CFR § 273.4, and lamps as described at 40 CFR § 273.5.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "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. FMC owns and operates the Facility, at which FMC manufactures engine crankshaft and piston rod bearings, bushings, and washers for automobiles and heavy equipment. Operations at this Site are subject to the Virginia Waste Management Act and the Regulations.
2. FMC submitted that certain RCRA Subtitle C Site Identification Form (received August 14, 1980) that gave notice of regulated waste activity at the Facility as a LQG of Hazardous Waste. FMC was issued EPA ID No. VA054039961 for the Facility. In a form (received November 26, 2001), FMC gave notice as a treater, storer, or disposer of Hazardous Waste. In a form (received March 26, 2002), FMC provided waste codes for the Hazardous Wastes generated at the Site.
3. FMC operated an electroplating operation until 2005 and has a Closure and Post-Closure Care Permit ("Permit") for two surface impoundments and two sludge drying beds that were associated with management of electroplating wastes. FMC also has a RCRA Corrective Action Permit for management of releases of trichloroethylene into groundwater.
4. Hazardous Wastes generated at the Facility include wastes with the following waste codes: D001, D002, D003, D006, D007, D008, D009, D035, F003, F005, U196, as described in 40 CFR § 261.21. These Hazardous Wastes are accumulated in Containers at the Facility after generation. The Facility also generates multiple Universal Wastes.

5. On September 20, September 23, and October 18, 2011, 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. Hazardous Waste determinations have not been made for fourteen drums of spill cleanup waste.
 - b. FMC did not do weekly inspections of the <90-day Accumulation Area in 2009 and 2010.
 - c. FMC did not keep logs of weekly inspections of the <90-day Accumulation Area in 2009 and 2010.
 - d. FMC did not perform inspections in the closure/post-closure areas in 2009 and 2010.
 - e. FMC did not maintain inspection logs for inspections in closure/post-closure areas in 2009 and 2010.
 - f. FMC did not provide training for employees managing the closure/post-closure areas and permitting activities in 2010 and 2011.
 - g. FMC did not provide training documents and records for employees managing the closure/post-closure areas and permitting activities in 2010 and 2011.
6. 40 CFR § 262.11 requires that a person who generates a Solid Waste, as defined in 40 CFR § 261.2, determine if that waste is a Hazardous Waste.
7. 40 CFR § 264.174 requires that, at least weekly, the owner or operator inspect areas where Containers are stored.
8. 40 CFR § 264.15 requires that the owner or operator inspect his facility for malfunctions and deterioration, operator errors, and discharges and record inspections in an inspection log or summary. Permit Module II.D also requires inspections in closure and post-closure areas. Permit Module I.G.1.d requires the maintenance of inspection logs for closure and post-closure areas.
9. 40 CFR § 264.16 requires that facility personnel 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 the Regulations. Facility personnel must take part in an annual review of the initial training. The owner or operator must maintain records of job titles and duties of employees who must receive Hazardous Waste management training and records of such training. Permit Modules I.G.1.a & II.E require Hazardous Waste management training for employees managing

closure and post closure activities. Permit Modules II.F.1a&b and II.E require the maintenance of records of such training.

10. On November 18, 2011, based on the inspection and follow-up information, the Department issued Notice of Violation No. 11-10-BRRO-R-003 to FMC for the violations described in Section C, paragraph 5, above.
11. In a conference call on March 16, 2012, Department staff discussed the violations with representatives of FMC.
12. On March 30, 2012, FMC submitted a written response to the NOV. This submittal included documentation of correction of the training and inspection violations. Additionally, FMC indicated in that submittal, which included an argument citing an August 11, 1988 interpretive letter from the U.S. Environmental Protection Agency to the Bureau of Alcohol, Tobacco, and Firearms, that it viewed the fourteen drums of material in question as evidence in a lawsuit with a third party rather than waste.
13. Based on the results of the September 20, September 23, and October 18, 2011 inspection, the March 16, 2012 conference call, and the documentation submitted on March 30, 2012, the Board concludes that FMC has violated 40 CFR § 262.11, 40 CFR § 264.174, 40 CFR § 264.15, 40 CFR § 264.16, and Permit Modules II.D, I.G.1.d, I.G.1.a, II.E, II.F.1.a, and II.F.1.b, as described in Section C, paragraph 5, above.
14. FMC has submitted documentation that verifies that the violations described in Section C, paragraphs 5b through 5g, above, have been corrected.
15. Further, on November 15, 2012, the United States District Court for the Western District of Virginia issued an order in the third party action (as referenced in Section C, paragraph 12, above) requiring FMC to preserve "certain barrel containers of material collected from the December 31, 2010 explosion" for 90 days (the "Court Order").
16. In light of the above, in order for FMC to complete its return to compliance, DEQ staff and representatives of FMC 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 FMC, and FMC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$11,600 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

FMC shall include its Federal Employer Identification Number (FEIN), 20-8350080, 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 FMC for good cause shown by FMC, 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, FMC admits 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. FMC 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. FMC declares that 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 FMC 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

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. FMC 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 occurrence. FMC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. FMC 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 FMC 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 FMC.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after FMC has completed all of the requirements of the Order;
 - b. FMC 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 FMC.

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

And it is so ORDERED this 5th day of February, 2013.



Robert J. Weld, Regional Director
Department of Environmental Quality

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Federal-Mogul Corporation voluntarily agrees to the issuance of this Order.

Date: 12/14/12 By: [Signature]

State/Commonwealth of VIRGINIA

City/County of BLACKSBURG / MONTGOMERY

The foregoing document was signed and acknowledged before me this 14 day of

DECEMBER, 2012, by _____

[Signature]
Notary Public

7523618
Registration No.

My commission expires: 9-30-2016

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. To comply with both this Order and the dates imposed by the Court Order, by February 22, 2013, FMC shall characterize, remove and properly dispose of the waste that was generated by the baghouse explosion that occurred in December 2010. FMC may retain samples of this waste in accordance with 40 CFR § 261.4(d)(1)(vi).
2. By March 27, 2013, FMC shall submit written documentation of proper disposal of the waste that was generated by the baghouse explosion that occurred in December 2010.

Contact

Unless otherwise specified in this Order, FMC shall submit all requirements of Appendix A of this Order to:

Robert Steele
Enforcement Specialist Senior
VA DEQ –Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019

Phone: (540) 562-6777
Fax: (540) 562-6725
Email: Robert.Steele@deq.virginia.gov

