COMMONWEALTH of VIRGINIA

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO GRIFFIN PIPE PRODUCTS CO., INC. EPA ID No. VAD065417008

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455(C) and (F), between the Virginia Waste Management Board, and Griffin Pipe Products Co., Inc. 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. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.

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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

4. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

7. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.

8. "GPP" means Griffin Pipe Products Co., Inc., a company authorized to do business in Virginia, and its affiliates, partners, subsidiaries, and parents. GPP is a "person" within the meaning of Va. Code § 10.1-1400.

9. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

10. "LQG" means large quantity generator, a hazardous waste generator that generates 1,000 kilograms (2,200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions (See 40 CFR § 262.34(a)-(b) and (g)-(l)).

11. "Manifest" means the shipping document EPA Form 8700–22 (including, if necessary, EPA Form 8700–22A), originated and signed by the generator or offeror in accordance with the instructions in the appendix to 40 CFR part 262 and the applicable requirements of 40 CFR parts 262 through 265.

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

13. "Order" means this document, also known as a Consent Order.

14. "Site" or "Facility" means the wood products manufacturing facility in Lynchburg, Virginia that is owned and operated by Griffin Pipe Products Co., Inc.

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

16. "TCLP" means the Toxicity Characteristic Leaching Procedure, test Method 1311 in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,* EPA Publication SW-846, as incorporated by reference at 40 CFR § 260.11.

17. "Va. Code" means the Code of Virginia (1950), as amended.

18. "VAC" means the Virginia Administrative Code.

19. "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.

20. "VHWMR" or "Regulations" 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.

SECTION C: Findings of Fact and Conclusions of Law

1. GPP owns and operates a ductile iron pipe manufacturing facility in Lynchburg, Virginia. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. GPP notified as a LQG of hazardous waste on August 18, 1980. Solid wastes generated at this facility include baghouse dust. When this baghouse dust occasionally exceeds 1.0 mg/L under the TCLP for cadmium it is also classified as a characteristic (D006) hazardous waste due to its toxicity characteristic.

3. March 5, 2010, GPP notified DEQ that it had disposed of a load[1] of waste baghouse dust at the Region 2000 Service Authority Concord Turnpike Landfill ("Landfill") on March 3, 2010. The baghouse dust in that load exceeded 1.0 mg/L under the TCLP for cadmium and was accordingly classified as a D006 characteristic hazardous waste. GPP did not manifest this hazardous waste shipment and did not mark the containers with the words "hazardous waste". In transporting this shipment, GPP did not observe applicable United States Department of Transportation ("DOT") labeling, marking, and placarding requirements.[2]

4. Pursuant to 40 CFR § 262.11, generators of solid waste must make a determination of that waste is also a hazardous waste prior to disposal.

5. Pursuant to 40 CFR §262.20, a generator who offers hazardous waste for off-site transport must use a manifest.

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[1] GPP's initial report stated that the amount of waste baghouse dust disposed of at the Landfill was estimated at thirteen tons. In an e-mail dated May 26, 2010, GPP explained that this estimate should be revised based on the facts that, after reporting to DEQ, GPP determined that the exact number of bags containing hazardous baghouse dust was seven and that, calculating from the average weight of a baghouse dust bag, the total weight of the hazardous waste shipped on that day would have been ten tons.

[2] In a letter dated May 24, 2010, GPP explained that the bags were marked with an accumulation start date and that the shipping containers met applicable DOT standards.

6. Pursuant to 40 CFR §262.31, §262.32, and §262.33, before transporting or offering hazardous waste for transportation off-site, a generator must comply with labeling, marking, and placarding requirements as specified in applicable United States Department of Transportation regulations on hazardous materials under 49 CFR part 172.

7. Pursuant to 40 CFR §262.34(a)(3), generators must label each container of hazardous waste with the words "Hazardous Waste".

8. Pursuant to 40 CFR §268.7(a)(1), generators of hazardous waste must determine if the waste has to treated before it can be land disposed.

9. Pursuant to 40 CFR §268.7(a)(2), generators of hazardous waste must prepare a one-time written notice to the receiving facility for wastes that do not meet applicable treatment standards.

10. On May 3, 2010, DEQ issued a Notice of Violation ("NOV") to GPP citing violations related to the disposal on March 3, 2010 of the baghouse dust that was classified as a hazardous waste at the Landfill.

11. Representatives of DEQ and GPP met on May 21, 2010 to discuss the NOV. During the meeting, GPP representatives explained that the load of baghouse dust in question had been shipped to the Landfill because of a misinterpretation of analytical results from a sample of the baghouse dust. GPP representatives also explained that on April 19, 2010, GPP completed removal of all of the baghouse dust it shipped to the Landfill on March 3, 2010 and has received analytical results that confirmed complete removal of the hazardous baghouse dust from the Landfill.

12. At the May 21, 2010 meeting, GPP provided appropriate documentation of complete removal of all of the hazardous waste it had disposed of at the Landfill on March 3, 2010. In a letter dated May 24, 2010, GPP stated that by March 12, 2010, it had implemented new baghouse waste characterization and shipping procedures designed to prevent recurrence of accidental shipment of hazardous waste to the Landfill. These changes include the elimination of the intermediate screening test that led to some of the confusion that contributed to the accidental shipment on March 3, 2010. GPP will instead rely only on final TCLP results to make hazardous waste characterization decisions for baghouse dust. Other changes include a requirement that lab reports be reviewed by at least two persons at GPP and a requirement that written approval be received before baghouse dust can be shipped offsite. Therefore, in view of the fact that GPP has successfully removed all hazardous waste it disposed of at the Landfill on March 3, 2010 and has taken measures to prevent the recurrence of incidents of that kind, it is not necessary for GPP to take any further corrective action.

13. Based on the documentation GPP provided to DEQ on May 21, 2010 and information discussed during the May 21, 2010 meeting between GPP and DEQ, the Board concludes that GPP has violated VHWMR and the Virginia Waste Management Act, as noted

above. More specifically, as noted above, the Board concludes that the GPP has violated the following statutes or regulations: 40 CFR § 262, Subpart A and 40 CFR § 268.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455(C) and (F), the Board orders GPP, and GPP agrees to pay a civil charge of $8,000.00 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

GPP shall include its Federal Employer Identification Number (FEIN) (360730380) 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 GPP for good cause shown by GPP, or on its own motion pursuant to the Administrative Process Act 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, GPP admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. GPP 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. GPP 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 GPP 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. GPP 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. GPP shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. GPP 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 GPP 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 GPP. Nevertheless, GPP 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) GPP petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    (b) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to GPP.

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

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, GPP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2nd day of November, 2010.

Robert J. Weld, Regional Director
Department of Environmental Quality

Griffin Pipe Products, Co., Inc. voluntarily agrees to the issuance of this Order.

Date: 9-21-2010 By: Robert Zeb

Griffin Pipe Products, Co., Inc.

Commonwealth of Virginia
City/County of Lynchburg

The foregoing document was signed and acknowledged before me this 21st day of September, 2010, by Robert Zeb.

Sandra L. Stamer
Notary Public

Registration No.

My commission expires: 3/27/2014

Notary seal:

OFFICIAL SEAL
SANDRA L STAMER
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:03/27/14