COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801
(540) 574-7800 Fax (540) 574-7878
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO AXALTA COATING SYSTEMS, LLC EPA ID No. VAD980554539

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 Axalta Coating Systems, LLC, regarding the Axalta Coating Systems, LLC 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. "Axalta" means Axalta Coating Systems, LLC, a limited liability corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Axalta 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 Axalta facility located at 7961 Winchester Road in Front Royal, 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. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

12. "RCRA" means the Resource Conservation and Recovery Act, enacted in 1976.

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. "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.

18. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Axalta Coating Systems, LLC (Axalta) owns and operates an automotive paint manufacturing facility (Facility) located in Front Royal, Virginia. The facility is classified as an LQG of hazardous waste in EPA's database.

2. Axalta, previously owned by E I DuPont Nemours & Co. Inc., submitted a RCRA Subtitle C Site Identification Form, received August 14, 1980, that gave notice of regulated waste activity at the Facility as an LQG of hazardous waste. DuPont was issued EPA ID No. VAD980554539 for the Facility.

3. At the Facility, Axalta generates the following solid wastes which are also hazardous wastes. Each waste is listed with associated waste codes as described in 40 CFR § 261.24 and 261.31. Hazardous wastes, including those listed below, are accumulated in containers at the Facility after generation.

   Ignitable Waste: D001
   Corrosive Waste: D002
   Reactive Waste: D003
   Cadmium Waste: D006
   Chromium Waste: D007
   Benzene Waste: D018
   Chloroform Waste: D022
   1,2 Dichloroethane Waste: D028
   Methyl ethyl ketone Waste: D035
   Spent halogenated solvents: F002
   Spent non-halogenated solvents: F003, F005
   Formaldehyde Waste: U122

4. On July 8 2015, DEQ staff conducted a Large Quantity Generator compliance inspection of the Axalta facility in Front Royal, Virginia. Staff also reviewed documents provided to DEQ during the course of the inspection. The following describe the staff's factual observations and identify the applicable legal requirements:

   a. Contractors responsible for managing the Raw Material Compactor accumulation area are not trained in RCRA requirements relevant to their positions.

      40 CFR 265.16(a)(1) as referenced in 9 VAC 20-60-265 of the VHWMR requires that facility personnel must successfully complete a program of classroom or on the job training that teaches them to perform their duties in a way that ensures the facility's compliance with requirements of this part.

      40 CFR 265.16(a)(2) as referenced in 9 VAC 20-60-265 of the VHWMR requires that this program teaches facility personnel hazardous waste management procedures relevant to the positions in which they are employed.

40 CFR 265.16(b) as referenced in 9 VAC 20-60-265 of the VHWMR requires that Facility personnel must successfully complete the training program within six months after the effective date of the regulation or six months after the date of their employment.

b. Axalta did not notify DEQ of the exact location of the Raw Material Compactor accumulation area.

   9 VAC 20-60-262(B)(4) of the VHWMR requires that a generator notify DEQ of each location where hazardous waste is accumulated.

c. On some of the weekly inspection reports where the inspector was to identify whether a drum was leaking or not, the checkbox was left blank. Also, on this same part, if "yes" was marked, there were no comments to identify the problem or note if it was corrected.

   40 CFR 265.174 as required by 40 CFR 262.34(d)(2) and as referenced in 9 VAC 20-60-262 and 265 of the VHWMR requires that at least weekly, the owner or operator must inspect areas where containers are stored.

5. On August 3, 2015, DEQ issued Notice of Violation (NOV) No. 15-08-VRO-001 to Axalta for the violations listed in paragraph 4, above.

6. On August 14, 2015, Axalta submitted documentation verifying that the contractors received appropriate training prior to the inspection and that Axalta had notified DEQ of the location of the Raw Material Compactor Accumulation area, although that area was named the MFG Wiper Compactor in the notification. Axalta also stated that the Environmental Coordinator, who was responsible for auditing the weekly inspections, had been on a leave of absence that resulted in gaps in their auditing process. All personnel involved with activities related to the <90 day accumulation areas have been provided with refresher training to ensure that inspection forms are fully completed and remedial actions documented. This submittal verified that the violations described in paragraph C(4.a through 4.c), above, have been corrected.

7. Based on the results of the July 8, 2015 inspection, the Board concludes that Axalta has violated 40 CFR 265.174 as described in paragraph C(4), above.

SECTION D: Agreement and Order

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

Pay a civil charge of **$7,800.00** 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

Axalta shall include its Federal Employer Identification Number 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, Axalta 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 Axalta for good cause shown by Axalta, 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 and in NOV No. 15-08-VRO-001 dated August 3, 2015. 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, Axalta admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

   b. Axalta 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 Axalta.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Axalta 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 Axalta 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 Axalta certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Axalta to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Axalta.

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, Axalta voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2015.

_____
Amy T. Owens, Regional Director
Department of Environmental Quality

---------- Remainder of this page intentionally left blank ----------

Axalta Coating Systems, LLC voluntarily agrees to the issuance of this Order.

Date: 11/5/15 By: Louis J Papa, Plant Manager
Louis J. Papa Title
Axalta Coating Systems, LLC

Commonwealth of Virginia
City/County of Warren

The foregoing document was signed and acknowledged before me this 5th day of November, 2015, by Louis J Papa who is Plant Manager of Axalta Coating Systems, LLC, on behalf of the company.

Fraulein D Griffith
Notary Public

332928
Registration No.

My commission expires: 12/31/2017

Notary seal:

FRAULEIN D. GRIFFITH
NOTARY PUBLIC
REG. #332928
MY COMMISSION EXPIRES 12/31/2017
COMMONWEALTH OF VIRGINIA