COMMONWEALTH of VIRGINIA

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO BGF INDUSTRIES, INC. EPA ID No. VAD119071314

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 BGF Industries, 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. "BGF" means BGF Industries, Inc., a corporation authorized to do business in Virginia, and its affiliates, partners, subsidiaries, and parents. BGF is a "person" within the meaning of Va. Code § 10.1-1400.

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

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

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

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 1000 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. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

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

13. "Site" or "Facility" means the textile manufacturing facility at 401 Amherst Avenue in Altavista, Virginia that is owned and operated by BGF.

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. "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. "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 at 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.

18. "Used oil", as defined at 40 CFR § 279.1, means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

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

20. "VAC" means the Virginia Administrative Code.

21. "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.

22. "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. BGF owns and operates a textile manufacturing facility at 401 Amherst Avenue in Altavista, Virginia. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. BGF submitted a RCRA Subtitle C Site Identification Form (received October 28, 1986) that gave notice of regulated waste activity at the Facility as a SQG of hazardous waste. BGF was issued EPA ID No. VAD119071314 for the Facility. In a subsequent form (received April 30, 2001), BGF gave notice as an LQG of hazardous waste.

3. BGF is LQG of hazardous waste and a small quantity handler of universal waste. Hazardous wastes generated at this facility include volan, a material containing chromium that is classified as a characteristic (D007) hazardous waste due to its toxicity characteristic; waste paint that is classified as a F-listed (F003, F005) hazardous waste; trichloroethane oil that is classified as a F-listed (F002) hazardous waste; methanol resin that is classified as a F-listed (F003) and characteristic (D001) hazardous waste due to its ignitability characteristic; aerosol can residuals that are classified as a characteristic (D001) hazardous waste due to its ignitability characteristic; and universal wastes (batteries and lamps). BGF also generates used oil.

4. On December 14, 2009, 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. BGF did not mark the accumulation start date on two hazardous waste containers in a 90-day accumulation area.

b. BGF did not label one hazardous waste container in a 90-day accumulation area with the words "Hazardous Waste".

c. BGF did not maintain a written job description for an employee responsible for hazardous waste management.

d. BGF accumulated universal waste (batteries) for approximately two years.

e. BGF did not appropriately label universal waste containers.

f. BGF did not mark one 55-gallon drum of used oil in the oil storage area with the words "Used Oil".

5. 40 CFR § 262.34(a)(2) requires LQGs to mark the accumulation start date on all hazardous waste containers kept in a less than 90 day accumulation area.

6. 40 CFR § 262.34(a)(3) requires LQGs to mark all hazardous waste containers with the words "hazardous waste".

7. 40 CFR § 262.34(a)(4), referencing 40 CFR § 265.16(d)(2), requires LQGs to maintain written job descriptions for employees responsible for hazardous waste management.

8. 40 CFR § 273.15(a), prohibits on-site storage of universal wastes for more than one year.

9. 40 CFR § 273.14(a) requires appropriate labeling of universal waste containers.

10. 40 CFR § 279.22(c) requires generators of used oil to mark all used oil containers with the words "used oil".

11. On January 14, 2010, based on the inspection and follow-up information, the Department issued Notice of Violation No. 10-01-BRRO-L-002 to BGF for the violations described in paragraph C(4), above.

12. On December 14, 2009, BGF provided written documentation of correction of all of the violations cited above except the universal waste accumulation violation. On December 23, 2009, BGF provided written documentation of correction of the universal waste accumulation violation.

13. Based on the results of the December 14, 2009 inspection, the Board concludes that BGF has violated VHWMR and the Virginia Waste Management Act, as noted above. More specifically, as noted above, the Board concludes that the BGF has violated the following statutes or regulations: 40 CFR § 262.34(a)(2); 40 CFR § 262.34(a)(3); 40 CFR § 262.34(a)(4), referencing 40 CFR § 265.16(d)(2); 40 CFR § 273.15(a); 40 CFR § 273.14(a); 40 CFR § 279.22(c).

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 BGF, and BGF agrees to pay a civil charge of $3,850.00 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

BGF shall include its Federal Employer Identification Number (FEIN) (56-1600845) 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 BGF for good cause shown by BGF, 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, BGF admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. BGF 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. BGF 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 BGF 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. BGF 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. BGF shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BGF 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 BGF 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 BGF. Nevertheless, BGF 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. BGF 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 BGF.

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

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, BGF voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Steven A. Dietrich, Regional Director
Department of Environmental Quality

BGF Industries, Inc. voluntarily agrees to the issuance of this Order.

Date: 12 Mar 2010 By: Bruce T. Mahnke

BGF Industries, Inc.

Commonwealth of Virginia
City/County of Campbell

The foregoing document was signed and acknowledged before me this 12th day of March, 2010, by Bruce T. Mahnke.

Mary Moses Hicks
Notary Public

Registration No.

My commission expires: _____

Notary seal:

MARY MOSES-HICKS
Notary Public
Commonwealth of Virginia
244147
My Commission Expires Nov 30, 2012