COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
F.E.C., INC.
FOR
FIBERGLASS ENGINEERING COMPANY-
Midland Facility
EPA ID No. VAR000518795

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 F.E.C., Inc., regarding the Fiberglass Engineering Company, 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. "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.

2. "CESQG" means a conditionally exempt small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month and meeting the other restrictions of 40 CFR § 261.5 and 9 VAC 20-80-120(A).

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 F.E.C., Inc.'s Facility located at 5019 Airport Road in Midland, Virginia.

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

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. "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 effected 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. "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).

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. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

SECTION C: Findings of Fact and Conclusions of Law

1. F.E.C. owns and operates the Facility in Midland, Virginia. The Facility manufactures fiberglass planters, trash receptacles, recycling units, and custom specialty items for commercial and residential use. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. F.E.C. uses acetone as an ingredient in the fiberglass and also uses acetone to clean spray equipment and tools. In the production, assembly, and finishing of the product, the acetone is re-used. Small buckets are used in each area, and then the acetone is consolidated into larger containers to allow the gel coat solids to settle out. The acetone is then separated from the solids using a strainer, and the acetone is re-used. At the time of a DEQ inspection conducted on January 28, 2010, the containers of solid wastes (gel coat solids) were left open until the waste solidified, and then the waste solids were removed from the containers and placed in roll-offs and disposed of at a landfill.

3. The gel coat solids mentioned in paragraph 2 above, at the point of generation, and immediately after the solids are strained from the acetone, are an ignitable waste as defined by 40 CFR §261.21(a)(2). An ignitable waste is a D001 characteristic hazardous waste.

4. On January 28, 2010, 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. Based on DEQ's review of documents provided by F.E.C. during and after the inspection, and observations made during the inspection, the waste gel coat solids generated by the facility during the manufacturing of fiberglass products are a characteristic hazardous waste at the point of generation.
    b. Facility records show that the quantity of waste gel coat solids generated by the F.E.C. during February, March, April, June, and July 2009, made the Facility subject to regulatory requirements for a SQG, however, waste generated during January, May, August, September, October, November, and December 2009, and January and February 2010 are subject to CESQG requirements.
    c. During the inspection, F.E.C. was not conducting a proper waste determination on the waste gel coat solids at the point of generation.
    d. Based on a review of US EPA's database, it appeared as though the Facility did not have an EPA identification number and that the Facility had not notified the Department of their hazardous waste activities using EPA form 8700-12.
    e. At the time of inspection, F.E.C. personnel had not received hazardous waste training.

f. At the time of inspection, while F.E.C. communicated with the local fire department and sheriff's office, it did not appear that F.E.C. had notified the local authorities that they handle hazardous waste.
g. At the time of inspection, F.E.C. did not have a Waste Analysis Plan for the on-site treatment of waste gel coat solids.

5. 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.

6. 40 CFR § 262.12 requires that a generator not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.

7. 40 CFR § 262.34(d)(5)(iii) requires that a DQG ensure that all employees be thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

8. 40 CFR § 264.34(d)(4) requires a SQG to comply with 40 CFR § 265.37 which requires that the facility make 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.

9. 40 CFR § 268.7(a)(5) requires that if a generator is managing and treating prohibited waste, to meet applicable LDR treatment standards found at §268.40, the generator must develop and follow a written waste analysis plan which describes the procedures they will carry out to comply with the treatment standards.

10. On March 17, 2010, based on the inspection and follow-up information, the Department issued a Notice of Alleged Violation to F.E.C. for the violations described in paragraphs C4 through C9 above.

11. On May 5, 2010, Department staff met with representatives of F.E.C. to discuss the violations.

12. Based on the results of the January 28, 2010 inspection, and the May 5, 2010 meeting, the Board concludes that F.E.C. has violated 40 CFR § 262.11, 40 CFR § 262.12, 40 CFR § 262.34(d)(5)(iii), 40 CFR § 262.34(d), and 40 CFR § 268.7(a)(5), as described in paragraphs C4 through C9 above.

13. F.E.C. has submitted documentation that verifies that the violations described in paragraphs C4 through C9, above, have been corrected. In addition, F.E.C. is currently operating as a zero waste facility, and is re-using the waste gel coat solids as weights in some of their fiberglass products.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders F.E.C. and F.E.C. agrees to pay a civil charge of $3,000.00 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

F.E.C. 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of F.E.C for good cause shown by F.E.C., 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, F.E.C. admits to 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. F.E.C. 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. F.E.C. 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 F.E.C. 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. F.E.C. 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. F.E.C. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. F.E.C 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 F.E.C. 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 F.E.C. Nevertheless, F.E.C. 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. F.E.C. 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

b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to F.E.C..

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve F.E.C. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. Any plans, reports, schedules or specifications attached hereto or submitted by F.E.C. 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.

12. The undersigned representative of F.E.C. 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 F.E.C. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of F.E.C.

13. 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.

14. By its signature below, F.E.C. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2011.

_____
Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

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F.E.C., Inc. voluntarily agrees to the issuance of this Order.

Date: 12-23-10 By: J. Don Morris, President
(Person) (Title)

Commonwealth of Virginia
City/County of Fauquier

The foregoing document was signed and acknowledged before me this 23 day of December, 20 10, by J. Don Morris who is President of F.E.C., Inc. on behalf of the corporation.

Vicky L. Pennington
Notary Public

136505
Registration No.

My commission expires: March 31, 2012

Notary seal:

Vicky L. Pennington
Notary Public
Commonwealth of Virginia
136505
My Commission Expires March 31, 2012