COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN VIRGINIA REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

~~Jeffery A. Steers~~
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION

ORDER BY CONSENT

ISSUED TO

LOHMANN SPECIALTY COATINGS LLC

SECTION A: Purpose

This is a Consent Order issued under the authority of § 10.1-1455 of the Code of Virginia between the Virginia Waste Management Board and Lohmann Specialty Coatings, LLC., for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

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

2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia and described in Va. Code § 10.1-1401 and 10.1-1184.

3. "CFR" means the Code of Federal Regulations.

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

5. "Director" means the Director of the Department of Environmental Quality.

6. "Facility" means the Lohmann Specialty Coatings, LLC. facility located at 14218 Litchfield Drive, Orange, Virginia 22960.

7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

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

9. "Regulations" means the Virginia Hazardous Waste Management Regulations (VHWMR), 9 VAC 20-60-12 *et seq.*, which incorporate text from Title 40 of the Code of Federal Regulations.

10. "Lohmann" means Lohmann Specialty Coatings, LLC., a corporation authorized to do business in Virginia.

SECTION C: Finding of Facts and Conclusions of Law

1. Lohmann operates a facility located at 14218 Litchfield Drive, Orange, Virginia ("Facility"). At the Facility, Lohmann conducts gluing operations for credit cards and other laminate cards.

2. Lohmann is a "person" as that term is defined by 9 VAC 20-60-260 and 40 CFR 260.10.

3. Pursuant to Va. Code § 10.1-1426, 9 VAC 20-60-270, and 40 CFR 270.1(c), a person is required to have a permit from the Director to treat, store, or dispose of hazardous waste.

4. The Facility is a "facility" as that term is defined by 9 VAC 20-60-260 and 40 CFR 260.10.

5. On February 23, 2005, Lohmann was issued a temporary/provisional EPA Identification number (VAP000016234) to dispose of a large quantity of hazardous waste.

6. On February 25, 2005, Mr. Glenn Sering, former Director of Operations for Lohmann, stated to Department staff that Lohmann does not routinely generate hazardous waste and that the temporary EPA identification number was due to a one time generation/disposal of contaminated product.

7. On February 28, 2005, the Department received an EPA RCRA Subtitle C Notification of Regulated Waste Activity form (form 8700-12) from Lohmann, who notified DEQ that the facility was a conditionally exempt small quantity generator of hazardous waste.

8. On August 27, 2007, NRO staff conducted a hazardous waste compliance inspection of the Facility.

9. According to hazardous waste disposal documents obtained subsequent to the inspection, Lohmann appears to be an episodic large quantity generator of hazardous waste who intermittently generates greater than 1000 kilograms of hazardous waste per calendar month. It also appears that Lohmann routinely exceeds the 90-day storage limit for large quantity generators based on available disposal documentation; therefore, pursuant to the Regulations it appears that Lohmann is operating a hazardous waste storage facility at the Facility.

10. According to Department records, Lohmann does not have a permit to store hazardous waste at the Facility.

11. On December 5, 2007, DEQ issued a Notice of Violation (NOV) to Lohmann arising from the observations made during the August 27, 2007 hazardous waste compliance inspection. The alleged violations detailed in the NOV included:

    a. 40 CFR 265 Subpart CC: Lohmann failed to store hazardous waste in proper containers.
    b. 40 CFR 262.34(a)(2): Lohmann failed to mark several 55-gallon containers storing waste isopropanol/adhesive with the dates that the hazardous waste began accumulating in the containers.
    c. 40 CFR 262.34(a)(3) and 40 CFR 262.34(c)(1): Lohmann failed to properly label containers storing hazardous waste with the words "Hazardous Waste" or with other words that identified the contents of the containers.
    d. 40 CFR 262.34(a)(4): Lohmann failed to provide hazardous waste management and emergency procedures training to personnel.
    e. 40 CFR 265 Subpart C-Preparedness and Prevention: Lohmann failed to maintain aisle space in the hazardous waste storage area. Access was blocked to a fire extinguisher by pallets of drums. Lohmann failed to make arrangements with the local authorities. 40 CFR 265 Subpart D-Contingency Plan and Emergency Procedures as required under 40 CFR 262.34(a)(4): Lohmann failed to have a contingency plan or a designated emergency coordinator.
    f. 40 CFR 262.34(b): Lohmann failed to receive a permit for the intermittent storage of hazardous waste on-site for more than 90 days. Lohmann failed to request extensions nor were granted an extension to store hazardous waste onsite for more than 90 days.
    g. 40 CFR 262.40: Lohmann failed to maintain the required documentation for a period of at least three years. This violation has been subsequently resolved.
    h. 40 CFR 262.41: Lohmann failed to submit a biennial report, which was due on March 1, 2006 required because a large quantity amount of hazardous waste was generated during the month of February 2005.
    i. 40 CFR 265.173(a): Lohmann failed to ensure that the containers of spent isopropanol/adhesive waste stored by the solvent distillation unit were kept closed during storage.
    j. 40 CFR 265.174: Lohmann failed to conduct inspections of hazardous waste storage containers on a weekly basis, at a minimum.
    k. 40 CFR 268.7(a)(1): Lohmann disposed of waste isopropanol/adhesive still bottom wastes in the trash, and failed to determine if the waste had to be treated before being land disposed (disposed of in a municipal solid waste landfill).
    l. 40 CFR Part 270 - The Hazardous Waste Permit Program and specifically §270.1(c): Lohmann failed to obtain a permit to store hazardous waste on-site for more than 90 days.
    m. 9 VAC20-60-262.B.4: Lohmann failed to notify the Department of the location of their hazardous waste accumulation areas.
    n. 9 VAC 20-60-315. D: Lohmann failed to notify the Department of their change in status from a conditionally exempt small quantity generator to a large quantity generator.

12. In response to the December 5, 2007 NOV, representatives of Lohmann met with the Department on January 9, 2008 and discussed the enforcement process and the steps Lohmann had made to come into compliance.

13. During the January 9, 2008 meeting with the Department, Lohmann asserts that it has been aggressive in making changes to its hazardous waste management practices and has addressed most of the compliance issues detailed in the December 5, 2007 NOV. Lohmann has agreed to perform the actions described in Appendix A to address the remaining compliance issues.

SECTION D: Agreement and Order

By virtue of the authority granted it in Va. Code §10.1-1455 the Board orders Lohmann Specialty Coatings, LLC, and Lohmann Specialty Coatings, LLC agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Lohmann Specialty Coatings, LLC, and Lohmann Specialty Coatings, LLC voluntarily agrees, to pay a civil charge of Twenty Thousand Dollars ($20,000) 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", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Either on a transmittal letter or as a notation on the check, Lohmann shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for Lohmann.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Lohmann Specialty Coatings, LLC, for good cause shown by Lohmann Specialty Coatings, LLC, or on its own motion after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Lohmann Specialty Coatings, LLC on December 5, 2007. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities, whether or not arising out of the same or similar facts, for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Lohmann Specialty Coatings, LLC admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Lohmann Specialty Coatings, LLC 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. Lohmann Specialty Coatings, LLC declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 Lohmann Specialty Coatings, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar 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. Lohmann Specialty Coatings, LLC 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 other such circumstance. Lohmann Specialty Coatings, LLC must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Lohmann Specialty Coatings, LLC shall notify the NRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this 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 NRO Regional Director in writing within 24 hours of learning of any condition above, which Lohmann Specialty Coatings, LLC intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. Any plans, reports, schedules or specifications attached hereto or submitted by Lohmann Specialty Coatings, LLC 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.

10. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

11. This Order shall become effective upon execution by both the Director or his designee and Lohmann Specialty Coatings, LLC.

12. This Order shall continue in effect until:

    a. Lohmann Specialty Coatings, LLC 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 Lohmann Specialty Coatings, LLC.

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

13. By its signature below, Lohmann Specialty Coatings, LLC voluntarily agrees to the issuance of this Order.

14. The undersigned representative of Lohmann Specialty Coatings, LLC 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 Lohmann Specialty Coatings, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Lohmann Specialty Coatings, LLC.

And it is so ORDERED this _____day of _____, 2008.

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

Lohmann Specialty Coatings, LLC voluntarily agrees to the issuance of this Order.

By: Steven J. De Jong
Title: President
Date: March 28, 2008

Commonwealth of Virginia
City/County of Orange

The foregoing document was signed and acknowledged before me this 28 day of MARCH, 2008, by Steven J. De Jong, who is Steven de Jong President (title) of Lohmann Specialty Coatings, on behalf of the Corporation.

Karen R. Aylor
Notary Public

My commission expires: 10-31-2008.

KAREN R. AYLOR
Notary Public
Commonwealth of Virginia
238032
My Commission Expires Oct 31, 2008

APPENDIX A
SCHEDULE OF COMPLIANCE

Lohmann shall:

1. Upon the effective date of this Order, operate the Facility in accordance with 40 CFR Part 262 et seq., 40 CFR Part 265 et seq., 40 CFR Part 268 et seq., 40 CFR Part 270 et seq., 9 VAC 20-60-315(a) and 9 VAC 20-60-262 et seq., to the extent that these requirements are applicable.

2. Within thirty (30) days of the effective date of this Order, notify and make arrangements with local authorities regarding the hazardous waste activities on-site as required by 40 CFR 265.37.

3. Within ninety (90) days of the effective date of this Order, the Facility shall meet all the standards and requirements of a Large Quantity Generator (LQG) including but not limited to:

    a. Store waste in containers that comply with the requirements of 40 CFR 265 Subpart CC.

    b. Mark all containers storing hazardous waste with the dates that the hazardous waste began accumulating in the containers as required under 40 CFR 262.34(a)(2).

    c. Properly label all containers storing hazardous waste with the words "Hazardous Waste" or with other words that identified the contents of the containers as required under 40 CFR 262.34(a)(3) and 40 CFR 262.34(c)(1).

    d. Provide hazardous waste management and emergency procedures training to personnel to ensure the Facility's compliance with the requirement of 40 CFR 262.34(a)(4) and 40 CFR 265.16. The training "program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personal hazardous waste procedures (including contingency plan implementation) relevant to the positions in which they are employed."[1]

    e. Comply with the requirements specified in 40 CFR 265 Subpart C-Preparedness and Prevention. The Facility shall have a contingency plan and a designated emergency coordinator as required by 40 CFR 265 Subpart D-Contingency Plan and Emergency Procedures as required under 40 CFR 262.34(a)(4) and the Plan

[1] 40 CFR 265.16(a)(2).

shall be approved by the Department. All terms, plans and conditions set forth in the contingency plan are incorporated into the requirements of this Order.

f. Maintain and make available for review all the required documentation (including all the hazardous waste disposal manifests and all the land disposal restriction notices) for a period of at least three years as required under 40 CFR 262.40.

g. If necessary Lohmann shall submit to the Department a waste analysis plan for the treatment of hazardous waste in tanks and containers on-site in accordance with 40 CFR Part 262 et seq., 40 CFR Part 265 et seq. and 40 CPR Part 268 et seq..

h. Ensure that the containers of spent hazardous waste are kept closed during storage, except when adding or removing hazardous waste, as required under 40 CFR 265.173(a).

i. Conduct and document inspections of hazardous waste storage containers on a weekly basis, at a minimum as required under 40 CFR 265.174.

j. Determine if any and all still bottoms meet the definition of hazardous waste (including, but not limited to waste isopropanol/adhesive still bottom wastes) and conduct the proper disposal methods as required under 40 CFR 268.7(a)(1).

k. Notify the Department of the location of their hazardous waste accumulation areas as required under 9 VAC20-60-262.B.4.

4. If Lohmann intends to store hazardous waste on-site for more than 90 days, the facility shall obtain and meet the conditions of a permit to store hazardous waste on-site for more than 90 days as required under 40 CFR Part 270 - The Hazardous Waste Permit Program and specifically §270.1(c).

5. Lohmann shall submit all materials required by Appendix A to:

Richard Doucette
Waste Program Manager
Virginia Department of Environmental Quality
Northern Virginia Regional Office
13901 Crown Court
Woodbridge, VA 22193