COMMONWEALTH of VIRGINIA

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO LYNCHBURG STEEL COMPANY, LLC FOR LYNCHBURG STEEL COMPANY, LLC'S FACILITY IN MONROE, VIRGINIA EPA ID No. VAD053183059

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 Lynchburg Steel Company, LLC, regarding the Lynchburg Steel Company, LLC facility in Monroe, Virginia, 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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

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 Lynchburg Steel Company, LLC's facility located at 275 Francis Avenue in Monroe, 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. "Lynchburg Steel" means Lynchburg Steel Company, LLC a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. Lynchburg Steel is a "person" within the meaning of Va. Code § 10.1-1400.

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

17. "VAC" means the Virginia Administrative Code.

18. "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.

SECTION C: Findings of Fact and Conclusions of Law

1. Lynchburg Steel owns and operates the Facility in Monroe, Virginia. The Facility fabricates steel products and operations at the Facility include grinding, welding, cutting, shot-blasting, and painting of metal. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. Lynchburg Steel submitted a RCRA Subtitle C Site Identification Form (received 10-23-1986) that gave notice of regulated waste activity at the Facility as an SQG of hazardous waste. Lynchburg Steel was issued EPA ID No. VAD053183059 for the Facility. In a subsequent form received November 23, 2009, Lynchburg Steel gave notice as an LQG of hazardous waste effective November 3, 2009 through November 30, 2009. In the November 23, 2009 form, Lynchburg Steel gave notice that it would return to SQG status effective December 1, 2009.

3. At the Facility, Lynchburg Steel generates waste paint and solvents, expired paint, spent fluorescent lamps, used oil, and used oil filters which are a solid waste. The waste paint and solvents, expired paint, spent fluorescent lamps, used oil, and used oil filters are also hazardous waste. The waste codes associated with the waste streams are D001, D005, D035, F003, and F005.

4. On November 16, 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.

5. A records review indicates that Lynchburg Steel generated greater than 2,200 pounds (or 1000 kg) of hazardous waste during the months of December 2006 through March 2007, October 2007, and November 2009. During the course of normal operations, the Facility generates 2-4 drums of waste paint per month. Due to paint expiration, 12 drums were generated in February 2007, 11 drums were generated in March 2007, and 13 drums were generated in November 2009.

6. 9 VAC 20-60-315(D) requires anyone who becomes a LQG to notify the Department in writing immediately of this change in generator status and document the change in the operational record. Lynchburg Steel failed to notify the Department of its change in

generator status for the time period of December 2006 through March 2007, October 2007, and November 2009.

7. 9 VAC 20-60-1283(E) requires that anyone who is a LQG at any time during the year shall be assessed the full annual fee amount no matter how short the period the Facility is operated or how briefly the generator is a LQG. Lynchburg Steel failed to pay the full annual fee for 2006 and 2007.

8. 40 CFR Part §262.34(a)(4) requires LQG to comply with 40 CFR Part § 265 Subpart C regarding personnel training and 40 CFR § 265 Subpart D regarding contingency plan and emergency procedures. Lynchburg Steel was not able to provide the proper documentation to demonstrate compliance with the requirements at the time of the inspection.

9. 40 CFR § 262.41 requires a LQG who ships any hazardous waste off-site to a treatment, storage, or disposal facility within the United State to prepare and submit a Biennial Report to the Regional Administrator by March 1 of each even numbered year. Lynchburg Steel failed to submit the 2007 Biennial Report as required.

10. 40 CFR § 262.11 requires a person who generates a solid waste to determine if that waste is a hazardous waste using either analytical testing or generator knowledge. Lynchburg Steel failed to make a waste determination on its spent fluorescent lamps. The spent fluorescent lamps have the potential to be hazardous waste based on the toxicity characteristic for mercury which the lamps contain.

11. 40 CFR 262.40(a) requires a generator to keep a signed copy from the designated facility which received hazardous waste from the generator for at least three years from the date the hazardous waste was accepted by the initial transporter. 40 CFR 262.44 requires a SQG to comply with the aforementioned requirement. Lynchburg Steel did not have the required signed copy from the disposal facility for a hazardous waste shipment dated 09/27/2007. Absence of the signed copy fails to demonstrate and certify that the hazardous waste shipment was disposed of properly. Lynchburg Steel corrected this violation the day of the inspection and provided documentation that a copy of the manifest for the hazardous waste shipment dated 09/27/2007, signed by the disposal facility's representative was retained in Lynchburg Steel's files.

12. 40 CFR 279.22(c) requires containers and aboveground tanks used to store used oil at generator facilities be labeled and marked clearly with the words "Used Oil". Lynchburg Steel failed to label the 500 gallon used oil tank with the words "Used Oil" as required. Lynchburg Steel corrected this violation on the day of the inspection and provided photo documentation to Department staff.

13. On November 19, 2009, Lynchburg Steel submitted documentation demonstrating that it is now managing the spent fluorescent lamps according to the Universal Waste regulations. The spent lamps are collected in cardboard boxes supplied by the lamp

recycling company AERC. When full, the boxes will be shipped to the AERC facility for recycling. Training on proper management of spent fluorescent lamps as Universal Waste has also been administered to employees responsible for managing spent lamps.

14. On November 23, 2009, Lynchburg Steel submitted a RCRA Subtitle C Site Identification Form that gave notice as a LQG of hazardous waste effective November 3, 2009 through November 30, 2009. In the form, Lynchburg Steel gave notice that it would return to SQG status effective December 1, 2009. The form also gave notice as a LQG of hazardous waste for the time period of December 2006 through March 2007 and October 2007.

15. On December 30, 2009, based on the inspection and follow-up information, the Department issued Notice of Violation No. 09-12-BRRO-L-001 to Lynchburg Steel for the violations described in paragraphs C6 through C12, above.

16. On January 4, 2010, Lynchburg Steel submitted the 2007 Biennial Report to the Department.

17. On January 5, 2010, Lynchburg Steel submitted a written response to the NOV via e-mail.

18. On January 6, 2010, Lynchburg Steel contacted the Department and requested invoices for the annual fees due to the Department for calendar years 2006 and 2007. On April 5, 2010, the Department submitted the requested invoices to Lynchburg Steel and the Department received payment from Lynchburg Steel on April 12, 2010.

19. Lynchburg Steel has developed a complete written training plan including written job titles and job descriptions for each position related to hazardous waste management. Lynchburg Steel has also developed a complete written contingency plan including arrangements made with the local fire department and police department. These plans will be in place in the event that Lynchburg Steel becomes an episodic LQG again in the future. Copies of these complete plans were submitted to the Department via email on April 4th and 7th, 2010.

20. Based on the results of the November 16, 2009 inspection and the documentation submitted as corrective actions on November 19, 2009, November 23, 2009, January 4, 2010, January 5, 2010, April 7, 2010, and April 12, 2010, the Board concludes that Lynchburg Steel has violated 9 VAC 20-60-315(D), 9 VAC 20-60-1283(E), 40 CFR Part 262.34(a)(4) which references 40 CFR Part 265 Subpart C and 40 CFR §265 Subpart D, 40 CFR § 262.41, 40 CFR §§262.11, 40 CFR § 262.40(a) as required in 40 CFR § 262.44, and 40 CFR § 279.22(c), as described in paragraphs C6 through C12, above.

21. Lynchburg Steel has submitted documentation that verifies the violations described in paragraphs C6 through C12, above, have been corrected.

SECTION D: Agreement and Order

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

Pay a civil charge of $17,407 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

Lynchburg Steel shall include its Federal Employer Identification Number (FEIN) 62-1763552 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 Lynchburg Steel for good cause shown by Lynchburg Steel, 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, Lynchburg Steel admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

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

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, Lynchburg Steel 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

Lynchburg Steel Company, LLC voluntarily agrees to the issuance of this Order.

Date: 4-14-10 By: _____, Chief Operating Officer
Douglas B. Anderson
Lynchburg Steel Company, LLC

Commonwealth of Virginia
City/County of Amherst

The foregoing document was signed and acknowledged before me this 14th day of April, 2010, by Douglas B. Anderson who is Chief Operating Officer of Lynchburg Steel Company, LLC, on behalf of the company.

Teresa L. Caplinger
Notary Public

102981
Registration No.

My commission expires: 6-30-11

Notary seal:

TERESA L. CAPLINGER
NOTARY PUBLIC
REG # 102981
MY COMMISSION EXPIRES 06/30/2011
COMMONWEALTH OF VIRGINIA