



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### SOUTHWEST REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Allen J. Newman, P.E.  
Regional Director

## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO CLINCH RIVER CORPORATION

**Registration No. 11140**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1309, and - 1316, between the State Air Pollution Control Board and Clinch River Corporation, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

### **SECTION B: Definitions**

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

1. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and - 1301.
2. “Clinch River Corporation” means Clinch River Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Clinch River Corporation is a ‘person’ within the meaning of Va. Code § 10.1-1300.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" means the Clinch River Corporation, located at 521 Claypool Hill Mall Road in Tazewell County, Virginia, which is permitted to operate a miscellaneous metal parts and coating facility.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Permit" means the minor New Source Review permit to modify and operate a miscellaneous metal parts and products coating facility which was issued under the Virginia Air Pollution Control Law and the Regulations to Clinch River Corporation on December 2, 2013.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution", means 9 VAC 5 chapters 10 through 80.
11. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

### **SECTION C: Findings of Facts and Conclusions of Law**

1. Clinch River Corporation owns and operates the Facility in Tazewell County, Virginia. The Facility is the subject of the Permit which allows the company to manufacture and coat miscellaneous metal parts.
2. On December 1, 2015, DEQ staff conducted a PCE during which a records review demonstrated the Facility used two non-equivalent coatings, Devprime 1401 and Devran 201, during October and November 2015. The coatings were determined to be not equivalent upon DEQ review of Group 1 and Group 2 coatings as listed in the permit.

3. Condition No. 4 of the Permit states, “The hourly and annual consumption of the following coating materials, or their equivalents, shall not exceed the categorical limits, in total, as specified...A change in the type or formulation of the coating materials listed above may require a change in the permit.”
4. 9 VAC 5-80-1180 requires that, “...C. Minor NSR permits may contain emissions standards as necessary to implement the provisions of this article and 9VAC5-50-260. The following criteria apply in establishing emission standards to the extent necessary to assure that emission levels are enforceable as a practical matter:...3. The standard may prescribe, as an alternative to or a supplement to a limit prescribed under subdivision 1 of this subsection, equipment, work practice, fuels specification, process materials, maintenance, or operation standards, or any combination of them...”
5. 9 VAC 5-170-160(A) states: “The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.”
6. Va. Code § 10.1-1322(A) gives the Department the authority to issue, amend, revoke or terminate and reissue permits, and failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.
7. On December 18, 2015, based on the results of the December 1, 2015 PCE, the Department issued a Notice of Violation No. ASWRO000318 to Clinch River Corporation for the alleged violations described in paragraphs C(2) above.
8. On December 29, 2015 and January 21, 2016, Clinch River Corporation contacted DEQ staff by telephone and electronic response to schedule a meeting and as a response regarding the NOV.
9. On March 8, 2016, Department staff met with representatives of Clinch River Corporation to discuss the alleged violations.
10. Based on the results of the December 18, 2015 PCE and the March 8, 2016 meeting, the Board concludes that Clinch River Corporation has violated Permit Condition 4 and 9 VAC 5-80-1180 as described in paragraphs C(2).

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Clinch River Corporation and Clinch River Corporation agrees to:

1. Perform the action described in Appendix A of this Order, and
2. Pay a civil charge of \$1,287 within 30 days of the effective date of the Order in settlement of the violation 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

Clinch River Corporation shall include its Federal 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Federal Pacific Transformer Company shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Clinch River Corporation for good cause shown by Clinch River Corporation, 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 only those violations specifically identified in Section C of this Order and NOV No.ASWRO000318 dated December 18, 2015. This Order shall not preclude the Board or 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, Clinch River Corporation admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Clinch River Corporation 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. Clinch River Corporation declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to 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 or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by Clinch River Corporation 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. Clinch River Corporation 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. Clinch River Corporation shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Clinch River Corporation shall notify 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 this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of 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 listed above, which the

parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of 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 Clinch River Corporation. Nevertheless, Clinch River Corporation 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 Clinch River Corporation has completed all of the requirements of the Order.
  - b. Clinch River Corporation 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 Clinch River Corporation.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Clinch River Corporation 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 Clinch River Corporation 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 Clinch River Corporation 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 Clinch River Corporation to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Clinch River Corporation.
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, Clinch River Corporation voluntarily agrees to the issuance of this Order.

And it is ORDERED this 9<sup>th</sup> day of May, 2016

  
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Allen J. Newman, P.E. - Regional Director  
Department of Environmental Quality

Clinch River Corporation voluntarily agrees to the issuance of this Order.

Date: 04/11/16 By: Jason Hairston, PRESIDENT  
Jason Hairston,  
Clinch River Corporation  
President,

Commonwealth of Virginia

City/County of TAZEWELL

The foregoing document was signed and acknowledged before me this 29 day of  
April, 2016 by JASON HAIRSTON who is  
PRESIDENT of Clinch River Corporation, on behalf of  
the corporation.

Deborah A. Smith  
Notary Public

239797  
Registration No.

My commission expires January 31, 2016

Notary Seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

### 1. Clinch River Corporation:

Shall submit a compliance plan within 45 days of the execution of this Order, detailing how the Facility will comply with the conditions of the Permit. The compliance plan may include a permit modification application to include the non-equivalent coating materials being used. Additionally, the compliance plan should outline a system for reviewing potential coating(s) prior to usage to establish equivalency with permitted coatings and steps to be taken for submitting permit modifications to include non-equivalent coatings in the future. The system should enable the facility to be made aware of any potential non-equivalent coating usage occurrences and allow for time for the permit modification application submittal and review for permit modification.

### 2. Certification of Documents and Reports

In accordance with 9 VAC 5-20-230(A), in all documents or reports, including, without limitation, the SEP Completion Report, submitted to DEQ pursuant to this Consent Order, Clinch River Corporation, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

3. **DEQ Contact**

Unless otherwise specified in this Order, Clinch River Corporation shall submit all requirements of Appendix A of this Order to:

Crystal C. Bazyk  
Enforcement and Air Compliance/Monitoring Manager  
VA DEQ – SWRO  
355-A Deadmore Street  
Abingdon, VA 24210  
(276) 676-4829  
[crystal.bazyk@deq.virginia.gov](mailto:crystal.bazyk@deq.virginia.gov)