



COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
VOESTALPINE HIGH PERFORMANCE METALS CORPORATION
FOR
SOUTH BOSTON FACILITY
EPA ID No. VAD089022685**

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 Voestalpine High Performance Metals Corporation, regarding the South Boston Facility, 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. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
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" or "Site" means the Voestalpine High Performance Metals Corporation South Boston Facility, located at 2306 Eastover Drive in South Boston, Virginia.
6. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
7. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
8. "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).
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
11. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Salem, Virginia.
12. "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 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.
13. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "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. "Voestalpine" means Voestalpine High Performance Metals Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Voestalpine is a "person" within the meaning of Va. Code § 10.1-1400.

19. "VSQG" means a very 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 20-81-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Voestalpine High Performance Metals Corporation ("Voestalpine") operates a metal facility in the Town of South Boston, Virginia. Voestalpine was issued EPA ID # VAD089022685 for the management of hazardous waste generated at the Facility.
2. Voestalpine submitted a RCRA Subtitle C Site Identification Form that gave notice of regulated waste activity at the Facility as a Small Quantity Generator ("SQG") of hazardous waste. Voestalpine was issued EPA ID No. VAD089022685 for the Facility.
3. On November 8, 2018, 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. The Facility operates machinery that generates an oil and soap mixture that exhibits the toxicity characteristic for arsenic (D004) and lead (D008). This waste stream is manifested and disposed of as hazardous waste. However, Facility representatives stated that while the waste is accumulated on-site the waste is managed under the 40 CFR 279 used oil standards.
 - b. The Facility operates a <180-day central accumulation area ("CAA") located at the covered drum storage area. At the time of the inspection, there were four 55-gallon containers of characteristic hazardous waste in the storage area not marked with the term "Hazardous Waste", an indication of the hazards of the contents, or the date upon which the period of accumulation began.
 - c. At the time of the inspection, the satellite accumulation area

("SAA") and the CAA did not have the required emergency information.

d. The Facility was unable to demonstrate that the CAA noted in Observation b. is inspected weekly.

e. The Facility was unable to provide documentation demonstrating attempts had been made to familiarize the local police and fire departments, along with other emergency responders, with the layout of the facility and its associated hazards.

f. Based on records provided at the time of the inspection, the Facility operated as a large quantity generator in July 2018 by generating greater than 2,200 lbs. of hazardous waste. The Facility did not notify DEQ of their change in generator status.

g. The Facility did not notify DEQ of the exact location of its <90-day CAA while operating as a large quantity generator in July 2018.

h. The Facility was unable to provide documentation demonstrating that weekly inspections were conducted of the <90-day central accumulation area containers during the period that the Facility operated as a large quantity generator.

i. The Facility did not document that the closure performance standards were met and notify DEQ of the closure of the <90-day central accumulation area noted in Observation g.; or place a notification within the Facility's operating record.

j. The Facility maintains a Spill Prevention, Control, and Countermeasures (SPCC) and Stormwater Pollution Prevention Plan on-site. This plan addresses general procedures the Facility should follow in the event of an oil spill, but does not specify actions Facility personnel must take in the event of a release of hazardous waste. As a result, the SPCC plan did not appear to meet the contingency plan content requirements during the time that the Facility operated as a large quantity generator.

k. Based on records provided at the time of the inspection, the

Facility did not develop or distribute a quick reference guide of their contingency plan while operating as a large quantity generator.

l. At the time of the inspection, the Facility was operating a lamp crushing unit on-site, which has been in operation since 2010. Amendment 18 of the VHWMR required facilities with lamp crushing operations to notify the Department of their lamp crushing operation by January 31, 2017. DEQ has no record that the Facility made such a notification.

m. At the time of the inspection, Facility representatives were unable to provide documentation demonstrating maintenance activities for the lamp crushing unit.

n. According to Facility representatives, maintenance personnel are responsible for operating the lamp crushing unit. Representatives stated that initial training was provided to each unit operator prior to use, but that no annual training has been conducted. Facility representatives were unable to provide documentation of the initial training.

o. The Facility operates their lamp crushing unit within the switch gear room. The ambient air from this room has to the potential to discharge into the main plant through large conduit openings in the wall. Additionally, the ambient air from this room is not filtered prior to discharge.

4. Pursuant to 9 VAC 20-60-262 [incorporating 40 CFR 262.16 by reference], a small quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of parts 124, 264 through 267, and 270 of this chapter, or the notification requirements of section 3010 of RCRA.
5. Pursuant to 9 VAC 20-60-262 [incorporating 40 CFR 262.16(b)(6) (i)(A) by reference], a small quantity generator must mark or label its container with the words "Hazardous Waste".

6. Pursuant to 9 VAC 20-60-262 [incorporating 40 CFR 262.16(b)(6)(i)(B) by reference], a small quantity generator must mark or label its container with an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704).
7. Pursuant to 9 VAC 20-60-262 [incorporating 40 CFR 262.16(b)(6)(i)(C) by reference], a small quantity generator must mark or label its container with the date upon which each period of accumulation begins clearly visible for inspection on each container.
8. Pursuant to 9 VAC 20-60-262 [incorporating 40 CFR 262.15(a)(7) by reference], all satellite accumulation areas operated by a small quantity generator must meet the preparedness and prevention regulations of §262.16(b)(8) and emergency procedures at §262.16(b)(9).
9. Pursuant to 9 VAC 20-60-262 [incorporating 40CFR262.16(b)(9)(ii)by reference], a small quantity generator must post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste:
 - (a) The name and emergency telephone number of the emergency coordinator;
 - (b) Location of fire extinguishers and spill control material, and, if present, fire alarm; and
 - (c) The telephone number of the fire department, unless the facility has a direct alarm.
10. Pursuant to 9 VAC 20-60-262 [incorporating 40 CFR 262.16(b)(2)(iv) by reference], at least weekly, the small quantity generator must inspect central

accumulation areas. The small quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

11. Pursuant to 9 VAC 20-60-262 [incorporating 40 CFR 262.16(b)(8)(vi) (A) by reference], the small quantity generator must attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility.
12. Pursuant to 9 VAC 20-60-315.D, anyone who becomes a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record Any large quantity generator who ceases to be a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record.
13. Pursuant to 9 VAC 20-60-262.B.4, for accumulation areas established after March 1, 1988, a large quantity generator shall notify the department and document in the operating record that he intends to accumulate hazardous waste in accordance with 40 CFR 262.17 prior to or immediately upon the establishment of each 90-day accumulation area. In the case of a new large quantity generator who creates such accumulation areas after March 1, 1988, he shall notify the department at the time the generator files the Notification of Hazardous Waste Activity EPA Form 8700-12 that he intends to accumulate hazardous waste in accordance with 40 CFR 262.18. This notification shall specify the exact location of the 90-day accumulation area at the site.
14. Pursuant to 9 VAC 20-60-262 [incorporating 40 CFR 262.17(a)(1)(v) by reference], at least weekly, the large quantity generator must inspect central accumulation areas. The large quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. See paragraph (a)(1)(ii) of this section for remedial action required if deterioration or leaks are detected.
15. Pursuant to 9 VAC 20-60-262 [incorporating 40 CFR 262.17(a)(8)by reference], a

large quantity generator accumulating hazardous wastes in containers, tanks, drip pads, and containment buildings, prior to closing a unit at the facility must meet the closure performance standards of paragraph (a)(8)(iii) of this section for container, tank, and containment building waste accumulation units or paragraph (a)(8)(iv) of this section for drip pads and notify EPA following the procedures in paragraph (a)(8)(11)(B) of this section for the waste accumulation unit. If the waste accumulation unit is subsequently reopened, the generator may remove the notice from the operating record.

16. Pursuant to 9 VAC 20-60-262 [incorporating 40 CFR 262.260(a) by reference], a large quantity generator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.
17. Pursuant to 9 VAC 20-60-262 [incorporating 40 CFR 262.262(b) by reference], a large quantity generator that first becomes subject to these provisions after May 30, 2017 or a large quantity generator that is otherwise amending its contingency plan must at that time submit a quick reference guide of the contingency plan to the local emergency responders identified at paragraph (a) of this section or, as appropriate, the Local Emergency Planning Committee.
18. Pursuant to 9 VAC 20-60-1505.B.7(h), the generator or facility under the control of the generator shall make written notification to the department of the physical location of the crushing operation no later than January 31, 2017, for all existing operations or 30 calendar days prior to beginning operation of a new crushing operation...
19. Pursuant to 9 VAC 20-60-1505.B. 7(j), crushing, handling, and storing mercury-containing lamps shall occur in a safe and controlled manner that minimizes the release of mercury to the environment. Requirements for a safe and controlled manner include that maintenance activities shall be documented and records of maintenance shall be maintained and available for inspection per subdivision 8 of

this subsection.

20. Pursuant to 9 VAC 20-60-1505.B.7(k), each unit operator shall receive initial and annual training in crushing procedures, waste handling, safety, use of personal protective equipment, and emergency procedures, including proper procedures for cleaning up broken mercury-containing lamps. All training shall be documented and records of training shall be maintained and available for inspection per subdivision 8 of this subsection.
21. Pursuant to 9 VAC 20-60-1505.B.7(b), crushing operations shall occur in a space with its ambient air isolated from other work areas where persons who are not involved in the crushing operation may work.
22. On December 20, 2018, based on the inspection and follow-up information, the Department issued Notice of Violation No. NOV-18-12-BRRO-002 to Voestalpine for the violations described in paragraphs C.3.(a) through C.3.(o), above.
23. On December 21, 2018, Voestalpine submitted a response to the NOV.
24. On January 29, 2019, Department enforcement staff met with representatives of Voestalpine to discuss the violations.
25. Based on the results of November 8, 2018 inspection, and the January 29, 2019 meeting, the Board concludes that Voestalpine has violated 9 VAC 20-60-262, 9 VAC 20-60-315.D., and 9 VAC 20-60-1505.B.7, as described in paragraphs C.3.(a) through C.3.(o)], above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 10.1-1455, the Board orders Voestalpine, and Voestalpine agrees to pay a civil charge of \$39,620 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

Voestalpine 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Voestalpine shall be liable for attorneys’ fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Voestalpine for good cause shown by Voestalpine, 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 and in NOV No. NOV-18-12-BRRO-002 dated December 20, 2018. 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, Voestalpine admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Voestalpine 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. Voestalpine 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 Voestalpine 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. Voestalpine 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. Voestalpine shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Voestalpine 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 parties intend 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 and any 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 Voestalpine.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Voestalpine has completed all of the requirements of the Order;
 - b. Voestalpine 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 Voestalpine.

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

And it is so ORDERED this 24th day of January, 2020.



Robert J. Weld, Regional Director
Department of Environmental Quality

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Voestalpine High Performance Metals Corporation voluntarily agrees to the issuance of this Order.

Date: 12/12/19 By: [Signature],
Michael Chessock, Director of Operations
Voestalpine High Performance Metals Corporation

Commonwealth of Virginia
City/County of Halifax

The foregoing document was signed and acknowledged before me this 12th day of Dec., 2019, by Michael E. Chessock who is Director of Operations of Voestalpine High Performance Metals Corporation, on behalf of the corporation.

[Signature]
Notary Public
7602743
Registration No.

My commission expires: 5/31/2022

Notary seal:

