

**WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION**

**ORDER BY CONSENT
ISSUED TO
EMPORIA FOUNDRY, INC.
EMPORIA, VA
EPA ID No. VAD023720105**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Waste Management Board and Emporia Foundry, Inc., for the purpose of resolving certain alleged 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 collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
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.

5. “Order” means this document, also known as a Consent Order.
6. “Emporia Foundry” means Emporia Foundry, Inc., certified to do business in Virginia.
7. “Facility” means the foundry facility owned and/or operated by Emporia Foundry, Inc. and located at 620 Reese Street, Emporia, VA.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “EPA” means the United States Environmental Protection Agency and any successor agencies or departments.
10. "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Citations in this Order referencing the federal CFR have parallel requirements in the VHWMR, and the citation thereof in this Order includes the parallel VHWMR requirements and citations.
11. “RCRA” refers to the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by, *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as “RCRA”), 42 U.S. C. §§ 6901 *et seq.*

SECTION C: Board’s Findings of Fact and Conclusions of Law

1. Emporia Foundry operates a foundry facility in Emporia, Virginia, where it manufactures municipal castings, including metal manhole covers and grating. Emissions from the cupola at the Facility are directed to a baghouse. The dust collected by the baghouse is a characteristic hazardous waste that exhibits the toxicity characteristic for lead. At all times material to the violations alleged in this Order, the Facility operated an on-site treatment system designed to treat the cupola dust and render it a non-hazardous material. The treated cupola dust was thereafter placed on a concrete pad where it was allowed to harden. The Facility no longer operates that system and now transports its untreated cupola dust off-site for treatment and disposal.
2. On May 23, 2000, Region III of the U.S. Environmental Protection Agency and the Virginia Department of Environmental Quality (DEQ) conducted a Compliance Sampling Inspection (CSI) at the Facility. On July 11, 2000, EPA collected samples of the treated cupola dust from the concrete pad. On September 27, 2000, EPA collected additional samples of treated cupola dust and other materials from the concrete pad and other areas at the Facility. Analytical data from these inspections and sampling events indicated that the treatment system was not adequately treating the cupola dust to render it non-hazardous.

3. On July 10, 2000, DEQ issued an inspection report which found that Emporia Foundry had failed to conduct weekly inspections of its closed hazardous waste landfill and questioned the waste characterization procedures used by Emporia Foundry to determine if the treated cupola dust was a non-hazardous material.
4. On April 24, 2001, and subsequent dates, Emporia, EPA and DEQ met to discuss alleged violations at the Facility of the Resource Conservation and Recovery Act (RCRA) and the Virginia Hazardous Waste Management Regulations (VHWMR).
5. On December 18, 2002, EPA Region III issued a First Amended Complaint, Compliance Order, and Notice of Right to Request Hearing (First Amended Complaint) in *In the Matter of Emporia Foundry, Inc.*, EPA Docket No. RCRA-03-2002-3008 pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C § 6928(a) and (g), and 40 C.F.R. Part 22. The First Amended Complaint alleged violations of RCRA and the VHWMR relating to the characterization, treatment, storage and disposal of the treated cupola dust. On January 9, 2003, Emporia filed an Answer and Request for Hearing denying the violations alleged by EPA.
6. Concurrently with the execution of this Consent Order, EPA and Emporia Foundry are entering into a Consent Agreement and Final Order (CAFO) to resolve the violations alleged by EPA in the First Amended Complaint referenced above.
7. EPA and DEQ have negotiated jointly with Emporia to resolve the alleged violations of RCRA and the VHWMR. This Consent Order resolves DEQ's claims for civil charges and penalties and for injunctive relief concerning the alleged violations of RCRA and the VHWMR, including the violations alleged by EPA in the First Amended Complaint. The CAFO will resolve EPA's claims for civil penalties and injunctive relief concerning the violations alleged by EPA in the First Amended Complaint.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code 10.1-1455(F) orders Emporia Foundry to perform, and Emporia Foundry agrees to perform, the actions described in Appendix A of this Order. In addition, the Board orders Emporia Foundry to pay a civil charge of Fifty Four Thousand Dollars (\$54,000) in settlement of the violations alleged in the First Amended Complaint filed by EPA, the corresponding violations of the VHWMR, and the alleged violations cited in this Order. This sum shall be paid in three installments in accordance with the following schedule:

- 1st Payment- The first payment in the amount of Fifteen Thousand Dollars (\$15,000) shall be paid by July 31, 2004.
- 2nd Payment- The second payment in the amount of Fifteen Thousand Dollars (\$15,000) shall be paid by July 31, 2005.
- 3rd Payment- The third payment in the amount of Twenty-Four Thousand Dollars (\$24,000) shall be paid by July 31, 2006.

The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for Emporia Foundry. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Emporia Foundry for good cause shown by Emporia Foundry. Upon satisfactory completion of the activities required by Appendix A, the Director (or his designee) shall issue a notice to Emporia Foundry indicating that such activities have been satisfactorily completed.
2. This Order addresses and resolves DEQ's claims arising from those violations identified herein, including those matters addressed in DEQ's Inspection Report of July 10, 2000, the Compliance Sampling Inspection conducted on May 23, 2000, and those violations alleged in EPA's First Amended Complaint issued on December 18, 2002. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein. Notwithstanding the above, the areas of the Facility listed in paragraph 1(a) of Appendix A shall not be subject to closure activities other than those set forth in Appendix A.
3. Emporia Foundry admits the jurisdictional allegations set forth in this Order, but does not admit any of the factual allegations or conclusions of law set forth herein or in the First Amended Complaint.

4. Emporia Foundry 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. Emporia Foundry declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the 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 enforce this Order.
6. Failure by Emporia Foundry 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. Emporia Foundry 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. Emporia Foundry shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Emporia Foundry shall notify the DEQ 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 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 within 24 hours 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 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 be effective upon the signature of both the Director (or his designee) and Emporia Foundry, Inc. In the event EPA's CAFO, *In the Matter of Emporia Foundry, Inc.*, EPA Docket No. RCRA-03-2002-0308, is not filed with the U.S. EPA Region III Hearing Clerk within ten (10) days of the date this Order is signed by the Director (or his designee), this Order shall have no effect and shall be vacated following notice by DEQ to Emporia Foundry, Inc.
11. This Order shall continue in effect until the Director or Board terminates the Order upon 30 days written notice to Emporia Foundry. Once all requirements in Appendix A and the approved closure plan have been completed, and all amounts due hereunder have been paid, Emporia Foundry may send a letter to DEQ requesting termination of the Order. DEQ shall thereafter provide the 30 day written notice to Emporia Foundry referenced above upon DEQ's agreement that all such requirements have been completed and all amounts due hereunder have been paid. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Emporia Foundry from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Emporia Foundry voluntarily agrees to the issuance of this Order.
13. The parties shall bear their own costs and attorney's fees.
14. Any dispute that arises with respect to the activities referenced in Appendix A or implementation thereof shall be subject to the dispute resolution procedures referenced herein:
 - a. Any such dispute shall first be the subject of informal negotiations between the parties. The period of informal negotiations shall not exceed ten (10) days from the date the dispute arises unless the parties agree otherwise in writing. The dispute shall be considered to have arisen when one party sends the other a written Notice of Dispute.
 - b. In the event the parties cannot resolve a dispute by informal negotiations, then the position advanced by DEQ shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiations, Emporia Foundry invokes the formal dispute resolution procedures in this paragraph by serving on DEQ a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position.

- c. Within ten (10) days after receipt of Emporia Foundry's Statement of Position, DEQ will serve on Emporia Foundry its Statement of Position, including, but not limited to, any factual data, analysis or opinion supporting that position. Within ten (10) days after receipt of DEQ's Statement of Position, Emporia Foundry may submit a reply.
- d. An administrative record of the dispute shall be maintained by DEQ and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this paragraph. Where appropriate, DEQ may allow submission of supplemental Statements of Position by the parties to the dispute.
- e. After the submission of all Statements of Position, DEQ shall conduct an informal fact finding proceeding pursuant to Virginia Code § 2.2-4019, and DEQ or the Board shall thereafter issue a case decision on the matter(s) in dispute. The case decision shall be subject to judicial review in accordance with the provisions of the Administrative Process Act.

And it is so ORDERED this _____ day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

Emporia Foundry, Inc. voluntarily agrees to the issuance of this Order.

By: _____
J. Robert Campbell, President
Emporia Foundry, Inc.

Date: _____

State of New Jersey

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of _____, 2003, by J. Robert Campbell, Jr., president of Emporia Foundry, Inc., on behalf of the Corporation.

Notary Public

My commission expires: _____.

APPENDIX A

SCHEDULE OF COMPLIANCE

EMPORIA FOUNDRY, INC.
EMPORIA, VA
EPA ID No. VAD023720105

- A. Within 30 business days after the effective date of EPA's CAFO, Emporia Foundry shall submit to DEQ a closure plan that, except as otherwise provided by this Appendix A and EPA's CAFO, is prepared in accordance with 9 VAC 20-60-264. The closure plan shall set forth a plan for meeting the requirements of 40 C.F.R. § 264.258(a) ("clean closure"). The closure plan shall apply to the areas of the Facility listed below, where (untreated or treated) cupola furnace baghouse dust was treated, accumulated, stored, or released. The hazardous waste constituents of concern to be considered in the closure plan for purposes of determining compliance with the closure performance standard shall be limited to the RCRA 8 metals (40 CFR Part 261.24 toxicity characteristic metals). If Emporia Foundry demonstrates to DEQ's satisfaction that one or more of these metals was not present in the treated cupola furnace baghouse dust, or was present but only at concentrations below health or risk-based levels, then Emporia may eliminate that metal from further consideration as a hazardous waste constituent of concern. Emporia Foundry shall submit to DEQ with the closure plan financial assurance for closure as required under 40 C.F.R. § 264.143.
- (i) the concrete pad and surrounding walls where the treated cupola furnace baghouse dust was placed after treatment, plus a 5-foot buffer area surrounding the walls of this concrete pad as shown on Exhibit A to this Appendix attached hereto;
 - (ii) the concrete pad beneath the cupola furnace baghouse dust treatment unit/mixer, plus a 5-foot buffer area surrounding a portion of the perimeter of this concrete pad as shown on Exhibit A to this Appendix attached hereto; and
 - (iii) the cupola furnace baghouse dust silo, the conveyance system used to transfer cupola furnace baghouse dust from the baghouse hopper to the silo, and the treatment unit/mixer in which cupola furnace baghouse dust was treated. (As an alternative, Respondent may remove all wastes practically-removable from the cupola furnace baghouse dust silo, the conveyance system and the treatment unit/mixer, and recycle that equipment as scrap metal, under the scrap metal exclusion, without further decontamination.)

- B. Upon approval of the closure plan by DEQ, Emporia Foundry shall implement the approved closure plan in accordance with the terms and schedule thereof.
- C. In lieu of implementing the groundwater monitoring requirements of 40 C.F.R. Part 264, Subpart F, Emporia Foundry may demonstrate that the existing groundwater monitoring system at the Facility is sufficient to monitor groundwater until such time as the existing hazardous waste management permit for post-closure care at the Facility is reissued. Such demonstration shall be provided in the closure plan. If DEQ determines that Emporia Foundry has not satisfactorily made the demonstration, then within 30 business days of receipt of DEQ's determination, Emporia Foundry shall submit to DEQ a groundwater monitoring plan that meets the requirements of 40 C.F.R. Part 264, Subpart F. Groundwater monitoring wells shall be installed within 30 business days of Emporia Foundry's receipt of DEQ's written approval of the groundwater monitoring plan, which must be implemented in accordance with the terms and schedule specified by the approval.
- D. If Emporia Foundry is unable to close any of the units/areas referenced above in accordance with 40 C.F.R. § 264.258(a) and the approved closure plan, *i.e.*, "clean close," Emporia Foundry shall close these units/areas and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills as required under 40 C.F.R. § 264.258(b). Within 60 days of the determination that any unit/area cannot be clean closed, Emporia Foundry shall submit to DEQ a closure plan to close such unit/area as a landfill and a post-closure plan as required by 40 C.F.R. § 264.258(c)(1). Emporia Foundry shall include with such plans the cost estimates calculated under 40 C.F.R. §§ 264.142 and .144. Emporia Foundry shall submit to DEQ with such plans financial assurance for closure as a landfill and post-closure care as required under 40 C.F.R. §§ 264.143 and .145.
- E. Upon approval of the closure plan (as a landfill) and the post-closure plan by DEQ, Emporia Foundry shall implement the approved closure and post-closure plans in accordance with the terms and schedule thereof.
- F. Within 180 days of the determination that any unit/area cannot be clean closed, Emporia Foundry shall submit an application to DEQ for a post-closure permit as required under 40 C.F.R. Part 270. The application shall be accompanied by the appropriate permit application fee as required under the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-1285.