RECEIVED PRO
AUG 06 2018

COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
Piedmont Regional Office
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
www.deq.virginia.gov

Matthew L. Strickler
Secretary of Natural Resources

David K. Paylor
Director

James J. Golden
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO COLONIAL FORD TRUCK SALES, INC. FOR COLONIAL FORD TRUCK SALES EPA ID VAD042201277

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 Colonial Ford Truck Sales, Inc. regarding Colonial Ford Truck Sales, 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. "Colonial Ford" means Colonial Ford Truck Sales, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Colonial Ford is a "person" within the meaning of Va. Code § 10.1-1400.

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" means Colonial Ford Truck Sales (EPA ID VAD042201277), located at 1833 Commerce Road, Richmond, Virginia, which is owned and operated by Colonial Ford Truck Sales, Inc.

7. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

9. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

11. "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 of section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMA. Citations to independent Virginia Requirements are made directly to the VHWMR.

12. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

13. "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).

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.

SECTION C: Findings of Fact and Conclusions of Law

1. Colonial Ford owns and operates the Facility in Richmond, Virginia. The Facility is a business that sells and services Ford vehicles. The Facility has three types of service areas: part service, tire rethreading and sales, and a body shop. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. Colonial Ford has been operating at this location since 1966. Colonial Ford submitted to EPA a RCRA Subtitle C Site Identification Form on September 1, 1986, received by EPA on September 25, 1986, that gave notice of regulated waste activity at the Facility as a SQG of hazardous waste. On October 28, 1986, Colonial Ford was issued EPA ID No. VAD042201277 for the Facility.

3. Colonial Ford generates hazardous and universal waste from the following three areas: a Part Service Area, Tire Rethreading and Sales Area, and Body Shop Area. The Part Service Area generates antifreeze, used oil and oil filters, oil rags, spent solvent, degreaser, solvent/degreasers rags, diesel and petroleum waste, aerosol cans and floor drain sludge. The Paint and Body Area generates solvent, spent paint, air filters and solvent/degreaser rags. The Tire Rethreading and Sales Area generates used rubber solvent, rubber adhesive, and air filters from the removal of old thread from the receipt of old tires, which are then shredded or rethread. The Universal wastes lead batteries and waste lamps are generated in all three areas. These wastes are a solid waste, and are also a hazardous waste, characterized as D-listed hazardous wastes, which means that they can exhibit ignitability, corrosivity, reactivity and/or toxicity.

4. On May 26, 2016, Department staff conducted a compliance evaluation inspection (CEI) of the Facility for compliance with the requirements of the Virginia Hazardous Waste Management Regulations. Based on the CEI and follow-up information, Department staff made the following observations:

    a. Several waste streams appeared to have had no hazardous waste determination performed and that a proper waste determination of all waste streams generated at the Facility had not been made. The waste streams observed included six 55-gallon drum containers that contained sludge collected from the floor drain, air filters from paint booths and the tire chamber, solvent aerosol cans, rubber adhesive and rubber solvent waste.

40 CFR 262.11 states in part that a person who generates a solid waste, must determine if that waste is a hazardous waste. If the waste is determined to be hazardous, the generator must determine possible exclusions or restrictions pertaining to the management of that specific waste.

b. Five of the six 55-gallon drum containers (or 2,200 lbs or 1,000 kgs), were located at the back lot of the property and showed signs of bulging and containing potentially hazardous waste drain sludge.

   40 CFR 265.171 states that if a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this part.

   40 CFR 265.172 states that the owner or operator must use a container made of or lined with materials which will not react with, and are otherwise compatible with the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

c. The six 55-gallon containers were not marked with an accumulation start date.

   40 CFR 262.34(a) states in part that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or; without having interim status, provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.

d. The six 55-gallon drum containers of potentially hazardous waste drain sludge stored at the facility were not marked with the words "Hazardous Waste" or "Hazardous Waste Analysis Pending".

   40 CFR 262.34(a) states in part that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that while being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste".

e. Colonial Ford was unable to provide documentation that the police, fire departments, and emergency response teams had been familiarized with the layout of the facility and associated hazards. It appears that Colonial Ford has not designated one police and fire department with primary emergency authority. In addition, it appears that Colonial Ford has not

familiarized local hospitals with the properties of the waste handled at the facility and the types of injuries or illness that could result.

40 CFR 265.37(a)(1-4) & (b) states in part that the owner or operator must attempt to make the following arrangements: (1) Familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes; (2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority; (3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and (4) Familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility. (b) Where State or local authorities decline to enter into such arrangement, the owner or operator must document the refusal in the operating record.

f. Colonial Ford was unable to demonstrate that facility staff had performed weekly inspections of their hazardous waste accumulation area.

   40 CFR 265.14 states that at least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

g. An alarm system capable of providing immediate emergency instruction to facility personnel was not observed.

   40 CFR 265.174 states in that that all facilities must be equipped with the following, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment as specified: (a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel…

h. Failure to post next to the facility telephone, the name and telephone number of the emergency coordinator, the telephone number for the local fire department, and a facility map with the location of fire extinguishers, spill control material and location of fire alarm(s).

   40 CFR 262.34(d) states in part that a generator greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less

without a permit or without having interim status provided that the generator complies with the following: (i) there must be a least one employee, the emergency coordinator, at all times either on the premises or on call, or available to respond to an emergency by reaching the facility within a short time period, with the responsibility for coordinating all emergency response measures as required. (ii) The generator must post the (A) name and number of the emergency coordinator next to the telephone, (B) the 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.

i. It appears that Colonial Ford did not provide training for employees that includes proper waste handling and emergency procedures.

   40 CFR 262.34(d)(5)(iii) states in part that the generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

   40 CFR 273.16 states in part that a small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

j. Colonial Ford was unable to demonstrate that testing and maintenance of spill control equipment, decontamination equipment, communications or alarm systems, and fire protection equipment had been performed where required.

   40 CFR 265.33 states in part that all facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

k. Colonial Ford was not managing the used oil filters as stated in the exclusion of Part 261.4(b)(13). The used oil filters were not being gravity hot-drained using an approved method, in order to be excluded from managing the used oil filters as hazardous waste.

   40 CFR 261.4(b) states in part that the following solid wastes are not managed as hazardous wastes provided: (13) Non-terne plated used oil filters are not mixed with wastes, and are gravity hot-drained using an approved method such as puncturing the filter anti-drain back valve or the filter dome end and hot-draining; hot-draining and crushing; dismantling

and hot-draining, or any other equivalent hot-draining method that will remove used oil.

l. Twenty to thirty spent universal waste lamps stored in open cardboard boxes.

40 CFR 273.13(d) states in part that small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste to the environment.. Universal waste lamps must be contained in structurally sound containers and compatible with the contents of the lamps. The containers and packages must remain closed and lack evidence of leakage, spillage or damage that could cause leakage.

m. Colonial Ford could not provide evidence that they had informed employees who handle or have responsibility for handling universal waste of the proper procedures for handling universal waste.

40 CFR 273.16 states in part that a small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste of the proper handling and emergency procedures appropriate to the type(s) of universal waste handles at the facility.

n. Boxes used to contain spent fluorescent lamps were not labeled with the words "Universal Waste Lamps" or other appropriate wording.

40 CFR 273.14(e) states in part that each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste- -Lamp(s)," or "Waste Lamps(s)," or "Used Lamps."

o. Boxes containing spent fluorescent lamps were not labeled with the date that the first spent lamp was placed in the boxes, and did not document how long the spent lamps were being accumulated.

40 CFR 273.15(c) states in part that a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received, by marking or labeling the container, marking or labeling each individual item, maintaining an inventory, placing the universal waste in a specific accumulation area and identifying the earlies date that any universal waste in the area became a waste or was received; or any other method that demonstrates the length of time of accumulation.

p. The solvent-contaminated wipes container was not labeled with the words "Excluded Solvent-Contaminated Wipes".

40 CFR 261.4(a) states in part that in order for solvent-contaminated wipes to be excluded from being managed as a solid waste, the contained solvent wipes must be, accumulated, stored, and transported in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes."

5. On October 20, 2016, DEQ issued Notice of Violation (NOV) No. 2016-10-PRO-602 to Colonial Ford for the violations described in paragraph C(4), above.

6. On January 10, 2017, DEQ met with Mr. Barkley, Vice President of Services, of Colonial Ford and his consultant to discuss hazardous waste regulations and the violations observed by DEQ staff at Colonial Ford. DEQ staff also discussed corrective actions to bring Colonial Ford into compliance with the regulations. During the meeting, Colonial Ford stated that the company was a conditionally exempt small quantity generator (CESQG).

   Based on the results of the May 26, 2016 compliance evaluation inspection, the September 15, 2016 phone conversation, and the January 10, 2017 meeting, the Board concludes that Colonial Ford has violated 40 CFR §262.11, 40 CFR 265.171, 40 CFR §262.34(a), 40 CFR §265.37(a) (1-4) and (b), 40 CFR §265.174. 40 CFR §265.32, 40 CFR §262.34(d), 40 CFR §262.34(d)(5)(iii), 40 CFR §273.16, 40 CFR §265.33, 40 CFR §261.4(b), 40 CFR §273.13(d), 40 CFR §273.14(e), 40 CFR §273.15(c) and 40 CFR 261.4(a), as described in paragraph C(4) through C(5), above.

7. In order for Colonial Ford to complete its return to compliance, DEQ staff and Colonial Ford have agreed to the Schedule of Compliance, which is incorporated in Appendix A of this Order.

SECTION D: Agreement and Order

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

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of **$ 32,000** 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 cashiers check payable to the "Treasurer of Virginia" and shall be delivered to:

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

Colonial Ford 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, Colonial Ford 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 Colonial Ford for good cause shown by Colonial Ford, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-400 *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, Colonial Ford admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.

4. Colonial Ford 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. Colonial Ford declares it has received fair and due process under the Administrative Process Act and 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 Colonial Ford 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. Colonial Ford 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 occurrences. Colonial Ford shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Colonial Ford 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 Colonial Ford 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 Colonial Ford. Nevertheless, Colonial Ford 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 Colonial Ford has completed all of the requirements of the Order.

    b. Colonial Ford 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 Colonial Ford.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Colonial Ford 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 Colonial Ford 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 the Order.

13. The undersigned representative of Colonial Ford 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 Colonial Ford to this document. Any documents to be submitted pursuant to this Order shall also be submitted by Colonial Ford or an authorized representative of Colonial Ford.

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, covenant, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Colonial Ford voluntarily agrees to the issuance of this Order.

And it is so ORDERED this_____day of _____, 2018.

_____
James J. Golden
Director, Piedmont Regional Office
Department of Environmental Quality

RECEIVED PRO
AUG 06 2018

Colonial Ford Truck Sales, Inc. voluntarily agrees to the issuance of this Order.

Date: 8/3/18 By: Josh W Barkley, Vice president
(Person) (Title)
Colonial Ford Truck Sales, Inc.

Commonwealth of Virginia
City/County of Richmond

The foregoing document was signed and acknowledged before me this 3RD day of

AUGUST, 2018, by Josh Barkley who is

VICE PRESIDENT of Colonial Ford Truck Sales, Inc. on behalf of the
(Name)
of the company.

William E Lipchak
Notary Public

7540562
Registration No.

My commission expires: 7/31/21

Notary seal:

WILLIAM E. LIPCHAK
NOTARY PUBLIC
REG # 7540562
MY COMMISSION EXPIRES
7/31/2021
COMMONWEALTH OF VIRGINIA

RECEIVED PRO
AUG 06 2018

APPENDIX A

1. Provide the following to DEQ:

1. By **October 17, 2018**, Colonial Ford shall certify in writing the following: that all solid waste streams at the Facility are identified and characterized, and that this determination is based on characteristics of ignitability, corrosivity, reacitivity, and toxicity, or that the waste is a *listed* hazardous waste under RCRA, and that all solid waste streams at the Facility are properly characterized in accordance with 40 CFR §262.11.

2. By **August 20, 2018**, Colonial Ford shall attempt to make arrangements with local police, fire department authorities, and the Virginia Department of Emergency Management for the type of waste handled at Colonial Ford in accordance with 40 CFR §265.37(a) (1-4) and (b).

3. By **August 20, 2018**, provide documentation demonstrating that Colonial Ford has developed a protocol and written log with a schedule to conduct weekly inspections of containers and areas where containers are stored to look for leaking containers, and/or deterioration of containers in accordance with 40 CFR 265.174.

4. By **August 20, 2018**, provide a photo demonstrating that Colonial Ford has posted by the telephone, the name and telephone number of the Facility emergency coordinator , telephone number of the local fire department, and a facility map showing locations of fire extinguishers, spill control material and fire alarm in accordance with 40 CFR §262.34(d).

5. By **August 20, 2018**, Colonial Ford shall provide a schedule for the testing and maintenance of all Facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, to be tested and maintained as necessary to assure its proper operation in time of emergency as required by 40 CFR §265.33

6. By **August 20, 2018**, Colonial Ford shall provide a description and schedule of the training provided to employees in the proper handling of hazardous and universal waste and maintain a current list of all employees trained in accordance with 40 CFR §262.34(d)(5)(iii) and 40 CFR §273.16.

2. Contact

Unless otherwise specified in this Order, Colonial Ford shall submit all requirements of Appendix A of this Order to:

RECEIVED PRO
AUG 06 2018

Cynthia Akers, Enforcement
VA DEQ-PRO
4949-A Cox Road
Glen Allen, VA 23060
(804) 698-4188 – phone
Cynthia.Akers@deq.virginia.gov