



COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO THE SOUTHERN FINISHING COMPANY, INCORPORATED EPA ID Nos. VAD023801210 & VAR000519652

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 The Southern Finishing Company, Incorporated 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. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
4. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
5. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled, as defined by 40 CFR § 260.10.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "Facilities" or "Site" means the SFC facilities located at 801 E. Church St. (Plant 12) and at 420 E. Commonwealth Blvd. (Plant 15), in Martinsville, Virginia.
9. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
10. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
11. "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).
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
13. "Order" means this document, also known as a Consent Order.
14. "SFC" means The Southern Finishing Company, Incorporated, a company incorporated and registered to do business in North Carolina and its members, affiliates, partners, subsidiaries, and parents. SFC is a "person" within the meaning of Va. Code § 10.1-1400.
15. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
16. "Storage" means the holding of solid or hazardous waste for a temporary period, at the end of which the waste is treated, disposed of, or stored elsewhere, as defined by 40 CFR § 260.10 and 9 VAC 20-81-10, as applicable.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "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.

20. "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. SFC owns and operates the Facilities, which are located in Martinsville, Virginia. The Facilities are operations for finishing wood accessories and pieces. Operations at the Facilities are subject to the Virginia Waste Management Act, the VHWMR, and the VSWMR.
2. Both Facilities are large quantity generators of hazardous waste. SFC was issued EPA ID No. VAD023801210 for Plant 12 and VAR000519652 for Plant 15.
3. At the Facilities, SFC generates solid wastes which are also hazardous wastes. Hazardous wastes generated at the Facilities include wastes with the following waste codes: D001, D035, F003, F005, as described in 40 CFR § 261.21. These hazardous wastes are accumulated in containers at the Facility after generation.
4. On August 15 and 16, 2017, DEQ-BRRO staff inspected the Facilities for compliance with the Virginia Waste Management Act and the VHWMR. Based on the inspection and follow-up information, the Department made the following observations:
 - a. SFC had transported hazardous waste accumulated at Plant 12 to Plant 15 without having first submitted to DEQ a Notification of Regulated Activity form for the transportation of hazardous waste.

40 CFR § 263.11(a) states that a transporter must not transport hazardous wastes without having received an EPA transporter identification number from the Administrator.
 - b. SFC had transported hazardous waste accumulated at Plant 12 to Plant 15 without a hazardous waste manifest.

40 CFR § 262.20(a)(1) states that a generator who transports a hazardous waste must prepare a hazardous waste manifest.
 - c. SFC representatives could not demonstrate (either through generator knowledge or analytical testing) that hazardous waste determinations had been made on three waste streams generated on site. These waste streams include spent aerosol cans, residues from spent catalyzed and lacquer topcoats generated at Booth 13A and spent white enamels, thinners, and lacquer residuals generated at Booth 14B.

40 CFR § 262.11 requires that a person who generates a solid waste, as defined in 40 CFR § 261.2, determine if that waste is a hazardous waste.

- d. At the time of the inspection, two 5-gallon satellite accumulation containers were observed to be open at Booth 11 and 3A.

40 CFR § 265.173(a) requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

- e. SFC had not notified DEQ of the establishment of a <90-day accumulation area.

9 VAC 20-60-262.B.4 states that generators shall notify the department and document in the operating record that they intend to accumulate hazardous waste in accordance with 40 CFR § 262.34 prior to or immediately upon the establishment of each accumulation area.

- f. At the time of the inspection, the hazardous waste containers located in a <90-day accumulation area in the chemical storage room were two rows deep, resulting in no, and therefore inadequate, aisle space between the containers.

40 CFR § 262.34(a)(4) and 40 CFR § 265.35 require that the owner and operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

- g. SFC failed to properly label a universal waste container.

40 CFR § 273.14(e) requires universal waste containers to be labeled with the words "Universal Waste – Lamps(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

- h. SFC was unable to demonstrate the length of time that universal waste spent lamps and universal waste spent batteries had been accumulated on site.

40 CFR § 273.15(c) states that a small quantity handler of universal waste must be able to demonstrate the length of time that universal waste has been accumulated.

- i. SFC was unable to provide copies of the final signed manifests received from the hazardous waste permitted treatment, storage, and disposal facility for one hazardous waste shipment from Plant 12 and two shipments from Plant 15. Additionally, exemption reports were not filed with DEQ from the missing final manifests.

40 CFR § 262.42(a) requires that a large quantity generator must (1) contact the transporter and/or the owner of the designated facility to determine the status of the

hazardous waste if the generator does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter, and (2) submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter.

- j. SFC failed to mark several hazardous waste containers in satellite accumulation areas with the words "Hazardous Waste."

40 CFR § 262.34(c)(1)(ii) requires that generators of hazardous waste mark hazardous waste containers in satellite areas with the words "Hazardous Waste."

- k. SFC failed to mark several hazardous waste containers in <90-day accumulation areas in both Plants 12 and 15 with the words "Hazardous Waste."

40 CFR § 262.34(a)(3) requires generators to mark each hazardous waste container in 90-day accumulation areas with the words "Hazardous Waste".

- l. SFC failed to mark several hazardous waste containers in <90-day accumulation areas at both Plant 12 and Plant 15 with accumulation start dates.

40 CFR § 262.34(a)(2) states 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 the date upon each period of accumulation begins is clearly marked and visible for inspection on each container.

- m. SFC was unable to provide documentation of weekly inspections of <90-day accumulation areas at both Plant 12 and Plant 15.

40 CFR § 262.34(a)(1)(i) and 40 CFR § 265.174 states that the owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors.

- n. SFC was unable to provide documentation demonstrating that annual hazardous waste management training for designated employees at both plants was conducted for the calendar year 2015.

40 CFR § 265.16(c) states that facility personnel must take part in an annual review of the initial training.

- o. SFC was unable to provide written job descriptions for both the Environmental Health and Safety position and the designated Booth Sprayer position.

40 CFR § 262.34(a)(4) states that the owner or operator must maintain a written job description for each person in a position at the facility related to hazardous waste management.

5. On December 21, 2017, based on the August 15 and 16, 2017 inspections and follow-up information, the Department issued NOV No. 17-10-BRRO-005 to SFC for the violations described in Paragraph C(4) above.
6. On February 27, 2018, SFC submitted a written response to the NOV.
7. On January 25, 2018, DEQ staff and representatives of SFC met to discuss the NOV.
8. Based on the results of the August 15 & 16, 2017 inspection, and the documentation submitted by SFC, the Board concludes that SFC has violated 40 CFR § 263.11(a), 40 CFR § 262.20(a), 40 CFR § 262.11, 40 CFR § 262.34(a)(1)(i), 40 CFR § 265.173(a), 9 VAC 20-60-262(B)(4), 40 CFR § 262.34(a)(4), 40 CFR § 265.35, 40 CFR § 273.14(e), 40 CFR § 273.15(c), 40 CFR § 262.42, 40 CFR § 262.34(c)(1)(ii), 40 CFR § 262.34(a)(3), 40 CFR § 262.34(a)(2), 40 CFR § 174, and 40 CFR § 265.16(c), as described in paragraph C(4), above.
9. SFC has submitted documentation that verifies that the violations described in Paragraph C(4) 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 Southern Finishing Company, and Southern Finishing Company, Inc. agrees to pay a civil charge of \$23,012.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

All payments 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

SFC shall include its Federal Employer Identification Number (FEIN) (56-1208143) 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, SFC 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 SFC for good cause shown by SFC, 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, SFC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. SFC 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. SFC declares that 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 SFC 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. SFC 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. SFC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. SFC 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 SFC 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 SFC.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after SFC has completed all of the requirements of the Order;
 - b. SFC 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 SFC.

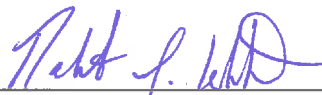
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve SFC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by SFC 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 SFC 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 SFC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of SFC.

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.

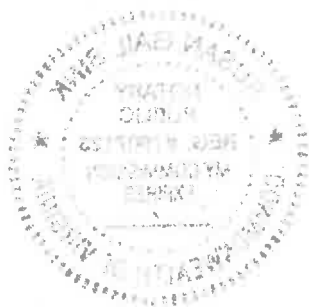
15. By its signature below, SFC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 4th day of October, 2018.



Robert J. Weld, Regional Director
Department of Environmental Quality

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Southern Finishing Company voluntarily agrees to the issuance of this Order.

Date: 8/6/18 By: Terry Carter

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 6 day of

August. 2018, by Terry Carter

Susan Gail Sink

Notary Public

7607123

Registration No.

My commission expires: 2/28/2022

Notary seal:

