COMMONWEALTH of VIRGINIA

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VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FDP VIRGINIA, INC.
FOR
FDP BRAKES
EPA ID No. VAD033742891

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 FDP Virginia, Inc., regarding FDP Brakes, 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. "Airport Facility" means the FDP Facility located at 1076 Airport Road in Tappahannock, Virginia.

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. "CESQG" means a conditionally exempt 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 20-80-120(A).

4. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

7. "Facilities" means both the Airport Road Facility and Mt. Landing Facility.

8. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.

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

10. "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).

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

12. "Mt. Landing Facility" means the FDP Facility located at 1290 Mt. Landing Road in Tappahannock, Virginia.

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

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

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

16. "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 effected 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.

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

18. "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).

19. "Va. Code" means the Code of Virginia (1950), as amended.

20. "VAC" means the Virginia Administrative Code.

21. "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. FDP operates the Airport Facility and Mt. Landing Facility in Tappahannock, Virginia. FDP is a drum and disk brake manufacturing business that manufactures, packages, and ships brakes to numerous large auto parts suppliers around the country. Operations at the Facilities are subject to the Virginia Waste Management Act and the Regulations.

2. Review of the U.S. EPA and DEQ data systems indicate that FDP had not notified of RCRA Subtitle C Activities prior to the inspection date of February 3, 2015. FDP had not been previously inspected by DEQ for compliance with hazardous waste regulations. Quality Automotive, the entity that previously operated at the Facility, first gave notice to the EPA of CESQG RCRA activities in 1989 and was issued EPA ID No. VAD033742891 for the facility located at 1076 Airport Road. On February 3, 2015, DEQ gave notice to the EPA that FDP was operating the Airport Facility as LQG of hazardous waste after an inspection was conducted at the Airport Road Facility. FDP is also a Small Quantity Handler of Universal Waste.

3. On June 5, 2015, FDP submitted an EPA Form 8700-12 to DEQ notifying that the Airport Facility was an episodic LQG of hazardous waste. FDP also operates on the adjacent property, 1290 Mt. Landing Rd, formerly owned/operated by South Tech, Inc. who operated the site as a LQG. This site was previously issued EPA ID. No. VAD982569675, and in the June 5, 2015, notification, FDP stated that the two Facilities are attached and contiguous and both will operate under the EPA Id. No. VAD033742891. EPA ID. No. VAD982569675 was subsequently revised in the EPA database to a non-generator status.

4. After a Department review of Essex County property records, it was subsequently discovered that the two Facilities are separated by multiple properties owned by different entities. Since hazardous waste is generated at both Facilities, each should retain active EPA Id. numbers. Revised EPA 8700-12 forms were subsequently submitted to DEQ on April 6 and 7, 2016, with the current generator status for each location.

5. At the Airport Facility, FDP generates solid shoe dip, solid cashew resin, liquid waste cashew resin, waste dip paint, and waste adhesive which qualify as solid wastes. Liquid waste cashew resin, waste dip paint, and waste adhesive were determined to be hazardous wastes after FDP conducted sampling and TCLP testing. This hazardous waste is accumulated in tanks and containers at the Airport Facility after its generation. At the Mt. Landing Facility, FDP accumulates spent aerosol cans which FDP characterized as hazardous due to ignitability (D001).

6. On February 3 and 5, 2015, Department staff inspected the Airport Facility and Mt. Landing 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 which are followed by the legal requirement:

a. FDP has accumulated hazardous waste at the Airport Facility for more than 90-days.

40 CFR §262.34(b) states a generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, and 267 and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 90-day period.

b. DEQ staff reviewed information prior to the inspection in the RCRA database regarding the Facilities. The Airport Facility (VAD033742891) was last noted as "Quality Automotive Company" and a CESQG of hazardous waste. FDP had not provided notification updating the Airport Facility information for EPA ID No. VAD033742891. Notification was never received from FDP for the Mt. Landing Facility.

9 VAC 20-60-315(D): states that 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.

c. The hazardous waste manifest 003566458SKS, dated February 27, 2013, was not signed by the destination facility.

40 CFR §262.23 states regarding manifest use that (a) The generator must: (1) Sign the manifest certification by hand; and (2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and (3) Retain one copy, in accordance with §262.40(a).

d. At the Facilities, FDP was unable to identify what waste streams were hazardous wastes.

40 CFR §262.11 Hazardous Waste Determination states in part that a person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste.

e. Accumulation start dates were not observed on any hazardous waste containers that were located at the Facilities.

40 CFR §262.34(a)(2) regarding accumulation time, 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.

f. Hazardous waste labels were not observed on any of the hazardous waste containers at the Facilities.

40 CFR §262.34(a)(3) regarding accumulation time, 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 hazardous waste is being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste."

g. FDP was unable to provide documentation that all staff members handling hazardous waste at the Facilities are trained annually in hazardous waste management.

40 CFR §265.16, as required by 40 CFR §262.34, states that Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part.

h. FDP was unable to provide documentation of job titles and job descriptions that are related to the management of hazardous waste at either of the Facilities.

40 CFR §265.16(d) regarding personnel training, states in part that the owner or operator must maintain a record at the facility of job titles for each position related to hazardous waste management, and the name of the employee filling each job.

i. FDP was unable to provide documentation for either of the Facilities that FDP personnel are instructed in hazardous waste management procedures relevant to their position.

40 CFR §265.16(a)(1) regarding personnel training states that facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this section. And (2) this program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

j. Of the approximately (500) 55-gallon containers of hazardous and non-hazardous waste at the Airport Facility, several containers were observed open, two containers were bulging and some showed evidence of leaking. Many of these containers were observed being accumulated outside on the bare ground with no cover.

40 CFR §265.31 states that facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

k. FDP was unable to provide documentation that the most recent copy of the contingency plan for either of the Facilities was submitted to the local police and fire departments, hospitals, and the State and local emergency response teams.

40 CFR §265.53 states that a copy of the contingency plan and all revisions to the plan must be: (a) Maintained at the facility; and (b) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

l. The contingency plan does not list the addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinators at either of the Facilities. Additionally, FDP's contingency plan does not designate a primary coordinator.

40 CFR §265.52(d) states in part that the contingency plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see §264.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

m. The contingency plans do not physically describe and identify the location of all emergency equipment at the Facilities.

40 CFR §265.52(e) states that the contingency plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

n. The contingency plans do not include provisions to ensure that equipment is cleaned and fit for its intended used before operations are resumed.

40 CFR §265.56(h) regarding emergency procedures states that the emergency coordinator must ensure that, in the affected area(s) of the facility: (1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and (2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

o. FDP was unable to provide documentation that the police, fire departments, and emergency response teams have been familiarized with the layout of the Facilities and associated hazards. FDP has not designated one police and fire department with primary emergency authority. Additionally, FDP has not familiarized local hospitals with the properties of the waste handled at the Facilities and the types of injuries or illness that could result.

40 CFR §265.37(a) states the owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations: (1) Arrangements to 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) Arrangements to 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 arrangements, the owner or operator must document the refusal in the operating record.

p. FDP accumulated waste containers in numerous locations throughout the Airport Facility. At the time of the inspection FDP was unable to provide documentation that they notified the Department of the exact location of the central accumulation areas.

9 VAC 20-60-262(B)(4) states in part that that for accumulation areas established after March 1, 1988, he shall notify the department and document in the operating record that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34 prior to or immediately upon the establishment of each accumulation area. This notification shall specify the exact location of the accumulation area at the site.

q. At the Airport Facility, several containers were observed that were corroded, had holes, and /or showed evidence of leaking.

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.

r. At the Airport Facility, two hazardous waste containers were observed that were bulging.

40 CFR §265.172 regarding the compatibility of waste with containers, 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.

s. At the Airport Facility, several containers of hazardous waste were not closed. Additionally, numerous hazardous waste containers were stacked on top of each other, on bare ground not under cover, and exposed to the elements. The containers were not properly handled or stored.

40 CFR §265.173 regarding the management of containers, states that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste and that a container holding hazardous waste

must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

t. Several central accumulation areas exist for hazardous waste throughout the Airport Facility. Mt Landing has one accumulation area for universal waste. At the time of the inspection, FDP was unable to provide written documentation of weekly inspections of their central accumulation areas at either facility.

40 CFR §265.174 states in part 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.

u. FDP had two accumulation areas for used oil located at the Airport Facility and one accumulation area for used oil at the Mt. Landing Facility. At the Airport Facility, DEQ personnel observed (6) 55-gallon polyethylene containers containing used oil being accumulated outside the maintenance building and (2) 55-gallon polyethylene containers containing used oil in the finished goods storage building. All the containers were closed and labeled "Hyd Fluid". At the Mt. Landing Facility, DEQ staff observed one 55-gallon polyethylene container and (2) 1-gallon plastic containers containing used oil in the maintenance shop. All three containers were closed and were not labeled "Used Oil".

40 CFR §279.22(C)(1) regarding used oil storage states that containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

On March 13, 2015, FDP submitted photographs documenting that the 55-gallon polyethylene drum and (2) 1-gallon plastic jugs containing used oil in the maintenance shop were labeled "Used Oil". Additionally, FDP submitted documentation showing that the full "Used Oil" containers were transported off-site on March 23, 2015, by Safety Kleen Systems, Inc. for recycling. On July 8, 2015, FDP submitted to the Department photographic documentation showing that the containers outside the maintenance building had been labeled and removed from outside weather exposure. The drum at Mt. Landing Facility now has a used oil label. No further action is necessary.

v. FDP had one accumulation area for universal waste located at the Airport Facility and one at the Mt. Landing Facility. In the maintenance building at the Airport Facility, DEQ staff observed (11) cardboard boxes of various sizes containing universal waste lamps. Two of the boxes were open. In the Haz Mat Storage Building at the Mt. Landing Facility, DEQ staff observed (17) cardboard boxes of various sizes containing universal waste lamps. Eight of the boxes were open, none of the boxes were labeled, none of the boxes were dated, and FDP staff could not demonstrate the length of time the universal waste lamps have been accumulating.

40 CFR §273.13(d) regarding the waste management of Lamps states that a small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the

environment, as follows: (1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

40 CFR §273.14(e) regarding the labeling/marking states that each lamp or container or package in which universal waste lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste—Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)".

40 CFR §273.15(c) regarding accumulation time limits 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.

On February 13, 2015, FDP submitted photographs documenting that all universal waste containers have been closed and labeled "Used Lamps". On February 13, 2015, FDP submitted standard operating procedures for the management of universal waste lamps. Also submitted was a copy of a label FDP will use for universal waste containers. No further action is necessary.

On February 13, 2015, FDP submitted photographs documenting that accumulation start dates have been placed on all universal waste containers. No further action is necessary.

w. FDP was unable to provide documentation that all staff members handling universal waste are trained on universal waste management.

40 CFR §273.16 Employee training - 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.

On February 13, 2015, FDP submitted documentation that all employees were trained on universal waste management on February 11, 2015.

7. During the February 5, 2015, inspection, FDP staff had labeled the six 55-gallon polyethylene containers outside the maintenance building with the words "Used Oil."

8. On February 9, 2015, a Request for Information was submitted to FDP requesting a complete and accurate inventory of the materials stored at the Airport Facility including the material identification, quantity, and disposition.

9. On February 27 and April 20, 2015, FDP submitted testing results from the "solid shoe dip" and "solid cashew resin" indicating that the waste streams are non-hazardous. Following the conclusion of the FDP's hazardous waste determination for the containers observed on-site, it

was determined that the Airport Facility had accumulated (126) 55-gallon containers of hazardous waste on-site.

10. On March 13, 2015, FDP submitted to the Department a spreadsheet documenting the material identification and quantity of the waste containers observed at the time of the inspection. Additionally, FDP submitted documentation showing that the full "Used Oil" containers were transported off-site on March 23, 2015, by Safety Kleen Systems, Inc. for recycling.

11. On March 13, 2015, FDP submitted photographs documenting that the 55-gallon polyethylene drum and (2) 1-gallon plastic jugs containing used oil in the maintenance shop (AOC #23) were labeled "Used Oil".

12. On June 1, 2015, based on the inspection and follow-up information, the Department issued Notice of Violation No. 2015-06-PRO-601 to FDP for the violations described in Section C.6 above.

13. On June 5, 2015, FDP submitted an EPA form 8700-12 notifying the Department that FDP is operating as a LQG resolving the violation described above in Section C.6.b.

14. On July 8, 2015, Department staff met with representatives of FDP to discuss the violations cited in the NOV and the issuance of this Consent Order.

15. On July 8, 2015, FDP submitted to the Department a copy of manifest 003566458SKS signed by the destination facility, resolving the violation described in Section C.6.c.

16. On July 8, 2015, FDP submitted to the Department a sitemap and spreadsheet with a determination of all their waste streams at the Facilities. This submittal combined with FDP's actions and submittals on February 27, March 13, and April 20, 2015, resolves the violation described in Section C.6.d above.

17. On July 8, 2015, FDP submitted to the Department photographic documentation that hazardous waste containers at the Facilities were labeled properly with accumulation start times. This resolves the two observed violations described above in Section C.6.e & 6.f.

18. On July 8, 2015, FDP submitted to the Department training documentation indicating that all the employees have been properly trained resolving the violations described in Section C.6.g, C.6.h, and C.6.i above.

19. On July 8, 2015, FDP submitted to the Department photographic documentation showing that on-site containers were not exposed to the weather resolving the violation described in Section C.6.j.

20. On July 8, 2015, FDP submitted to the Department a site map indicating the location of the hazardous waste accumulation area resolving the violation described in Section C.6.p.

21. On July 8, 2015, FDP submitted to the Department photographic documentation showing that all the noted waste containers were now covered and single stacked. Leaking waste containers were

replaced with new ones. In addition, the waste containers were no longer exposed to the weather. This resolves the violations cited above in Section C.6.q, C.6.r, and C.6.s.

22. On July 8, 2015, FDP submitted to the Department copies of weekly inspection reports which began in June 2015 which resolves the violation described in Section C.6.t.

23. On July 8, 2015, FDP submitted to the Department photographic documentation showing that the containers outside the maintenance building had been labeled and removed from outside weather exposure. The container at Mt. Landing now has a used oil label. This action and the actions and submittals described in Sections C.7. and C.10. and received on February 5, 2015 and March 13, 2015 respectively, resolve the violations described in Section C.6.u.

24. On December 14, 2015, FDP informed the Department that the last 6 containers of hazardous waste were removed from the Airport Facility on December 11, 2015.

25. Based on the results of February 3 and 5, 2015 inspections, the documentation submitted between February 5, 2015 and March 23, 2015 and the July 8, 2015 meeting date, the Board concludes that FDP has violated 9 VAC 20-60-315, 9 VAC 20-60-1283, 9 VAC 20-60-262(B)(4), 40 CFR §§ 262.34(b), 262.23, 262.11, 262.12, 262.34, 262.40, 265.16, 265.31, 265.52, 265.53, 265.56, 265.37, 265.171, 265.173, 265.174, 279.22, 273.13, 273.14, 273.15 and 273.16 as described in Section C.4, above.

26. In addition to the above referenced actions by FDP, DEQ staff and FDP have agreed to the Schedule of Compliance, which is incorporated as 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 FDP, and FDP agrees to:

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

2. Pay a civil charge of $110,700 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
October 30, 2016	$13,838 or balance
December 30, 2016	$13,838 or balance
March 30, 2017	$13,838 or balance
June 30, 2017	$13,838 or balance
September 30, 2017	$13,838 or balance
December 30, 2017	$13,838 or balance
March 30, 2018	$13,838 or balance
June 30, 2018	$13,834

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by FDP. Within 15 days of receipt of such letter, FDP shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

4. 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

5. FDP 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, FDP 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 FDP for good cause shown by FDP, 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, FDP 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. FDP 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. FDP 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 FDP 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. FDP 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. FDP shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. FDP 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 FDP 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 FDP.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after FDP has completed all of the requirements of the Order;

b. FDP 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 FDP.

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

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, FDP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 30th day of SEPTEMBER, 2016.

Michael P. Murphy, Regional Director
Department of Environmental Quality

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FDP Virginia, Inc., voluntarily agrees to the issuance of this Order.

Date: 8-10-16 By: William R Carney V.P.
(Person) (Title)
FDP Virginia, Inc.

~~Commonwealth of Virginia~~ State of NJ
City/County of Camden

The foregoing document was signed and acknowledged before me this 10th day of August, 2016, by William R. Carney who is V.P. of FDP Virginia, Inc., on behalf of the corporation.

Kathleen Nelson
Notary Public

2448515
Registration No.

My commission expires: 8/1/2019

Notary seal:

KATHLEEN NELSON
ID # 2448515
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires August 01, 2019

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Container Management

FDP shall manage all containers in accordance with the requirements of 40 CFR §§ 262.34 and 265.171.

a. Within 60 days of the issuance of this Order, FDP shall submit photographs and documentary evidence demonstrating that the containers at the Facility are being maintained in good condition in accordance with the regulatory requirements.

b. FDP shall respond to any notices of deficiency with respect to the condition of its containers or its documentation in accordance with the notice.

2. Contingency Plan

Within 60 days of the issuance of this Order, FDP shall prepare an updated contingency plan for the Facility in accordance with 40 C.F.R. § 265 Subpart D and submit a copy of it to the Department for review.

a. If the contingency plan submitted by FDP is found by the Department to be inaccurate or deficient, FDP shall respond and correct any inaccuracies or deficiencies regarding the plan within 10 days from receiving the notice of the inaccuracy or deficiency.

b. Within 10 days after final approval by the Department, FDP shall certify in writing that a copy of the contingency plan has been provided to the necessary parties under 40 C.F.R. § 265.53 and that the contingency plan will be implemented, as needed, in accordance with 40 C.F.R. Subpart D.

3. Training

Within 90 days of the issuance of this Order, provide hazardous waste training to all staff and submit to the Department a copy of the training materials and attendance roster.

4. Contact

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

Frank Lupini
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949A Cox Road,
Glen Allen, Virginia 23060
Frank.Lupini@deq.virginia.gov