



November 25, 2003

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12-17-03

Ms. Evangeline Cummings
Office of Environmental Information
OEI Docket Center, Room B128
EPA West Building
1301 Constitution Ave., N.W.
Washington, DC 20460

Request for Reconsideration – Information Quality Guidelines
BMW Manufacturing Corp.

Dear Ms. Cummings:

BMW has received the August 27, 2003 response from Ms. Walker B. Smith, Director, Office of Regulatory Enforcement, to the Request for Correction (#7421) that BMW submitted on February 7, 2003. At your suggestion, I spoke to Mr. Joseph Acton who is knowledgeable about OECA's ECHO database. Mr. Acton informed me that BMW is not currently shown as being in violation in the ECHO or SFIP database. However, Mr. Acton advised that this is due to a database error affecting a number of companies. He indicated that when the database is repaired and refreshed, it is OECA's intention to show a history of eight quarters of "Significant Non-compliance." This was the reason our company submitted a Request for Correction. We disagree that Ms. Smith's August 27, 2003 response adequately addressed the issues raised in our Request for Correction and we are therefore submitting a Request for Reconsideration at this time.

Administration Offices:
1400 Hwy. 101 South
Greer, South Carolina 29651

Mailing Address:
P.O. Box 11000
Spartanburg, SC 29304-4100

Telephone:
864 989 6000
864 989 5764 (direct)

Fax:
864 801-5764

E-Mail:
gary.weinreich@bmwmc.com

We continue to be confused by EPA's position on the issue of "Significant Non-compliance" as it relates to the July 2001 inspection of our facility. Basically, all EPA offices with which we have contact, except OECA, inform us we are performing at levels that meet or exceed EPA's standards for top environmental performers (e.g. National Environmental Performance Track, Landfill Methane Outreach Partners, Green Power Leadership Club, etc.) Indeed this was Gov. Whitman's message when she visited our facility in April (Attachment 1 – Governor Whitman's remarks).

One program office, however, views our compliance history as not only including persistent violations, but violations so severe that we are included in a category otherwise reserved for recalcitrant violators and the nation's worst polluters.



For this reason, BMW submits this Request for Reconsideration so the executive review panel (e.g., members of EPA's top management) can help us resolve this issue using fair, open and straightforward dialogue and common sense logic promised to Performance Track members.

We understand that no information is required beyond the February 7, 2003 Request for Correction (#7421). As we explained in that Request, BMW has, in good faith, consistently attempted to maintain full compliance with all applicable environmental requirements, including those identified during the July 2001 inspection. The South Carolina Department of Health and Environmental Control (DHEC) has been clear and consistent in not considering BMW to have been in Significant Non-compliance. Finally, EPA accepted as adequate the April 30, 2003 agreement executed between DHEC and BMW (Attachment 2). This agreement makes no mention of Significant Non-compliance and completely resolves any issues concerning the July 2001 inspection without any violations or penalties. Given these circumstances, BMW's historical compliance status simply does not meet the letter, intent or any reasonable interpretation of the definition of "Significant Non-compliance."

The legal questions BMW requests be considered by the executive panel during their review are related to EPA's written criteria for determining Significant Non-compliance under RCRA, namely:

1. Was there ever an actual exposure to a hazardous waste or constituent as necessary to be listed in Significant Non-compliance?
2. Was there ever a likelihood of causing an exposure as necessary to be listed in Significant Non-compliance?
3. Did EPA's Office of Solid Waste and Emergency Response not recently revise the requirements in question because the likelihood of exposure in automobile plants is extremely remote and these issues are already covered adequately by other existing EPA regulations?
4. Is BMW considered a "chronic or recalcitrant violator" as necessary to be listed in Significant Non-compliance?
5. Were there substantial violations from the terms of a "permit" as necessary to be listed in Significant Non-compliance?
6. Were there substantial violations from the terms of an "order or agreement"? If so, specifically what order or agreement was violated?



7. Were there substantial violations from the terms of "RCRA statutory or regulatory requirements"? If so, specifically what statute or regulation and how was the degree of severity determined?
8. Did SC Department of Health and Environmental Control not perform a detailed site-specific review of BMW's compliance status as suggested in the April 1997 guidance document from Elizabeth Cotsworth and determine that the guidance in question does not apply to BMW's situation and that EPA's long-standing "continued use" policy and traditional definitions of when a waste becomes a waste do apply in BMW's specific situation?
9. Did BMW not set the example among all automobile companies by contacting the state agency authorities on numerous occasions and hiring a nationally recognized consulting firm in 1999 (e.g., Clay Associates, Inc.) to review and advise as to BMW's compliance status with respect to the regulations in question?
10. Did BMW not inquire as to its compliance status and did SC DHEC not confirm BMW's compliance on numerous occasions prior to EPA's July 2001 inspection?
11. Did SC DHEC and BMW not execute a Consent Order on April 30, 2003 that was reviewed in detail by EPA and makes no mention of "violations" or "releases" or "substantial deviations" of any kind?
12. Has a "Notice of Violation" been issued over these matters?
13. Were all issues identified during the July 2001 inspection, including observations and minor improvement suggestions, not quickly and efficiently resolved using the Corrective and Preventive Action Procedure included in BMW's Environmental Management System, eliminating the need for further enforcement action?
14. Does listing this situation as a SNC comply with the letter and spirit of EPA's definition of a SNC under RCRA?
15. Did SC DHEC, as the lead agency and the agency delegated authority for RCRA compliance, ever consider BMW to be in Significant Non-compliance?
16. Does this issue meet any of Assistant Administrator J.P. Suarez's principles for "Smart Enforcement"?
17. Is EPA's approach to this SNC consistent with the Administrator's commitments to Performance Track members, specifically the intent to improve collaboration and environmental performance while simultaneously reducing unnecessary environmental bureaucracy?



Like other members of EPA's recognition programs, BMW has made the commitment to deliver environmental performance that exceeds minimum regulatory requirements. It is important to us that the EPA meets its obligations by making information available to the public that accurately reflects our compliance status.

Yours truly,

BMW Manufacturing Corp.

A handwritten signature in black ink that reads "Gary Weinreich".

Gary Weinreich
Environmental Services Manager

Attachments: Remarks of Gov. Whitman at BMW – April 30, 2003
Consent Agreement 03-12-HW

cc: R. Lewis Shaw, Deputy Commissioner – South Carolina DHEC
Bob King, Assistant Deputy Commissioner – South Carolina DHEC

ATTACHMENT 1

Remarks of Governor Christine Todd Whitman,
Administrator of the U.S. Environmental Protection Agency,
at the
BMW Manufacturing Corporation
Spartanburg, South Carolina

April 30, 2003

Thank you, Commissioner (Earl) Hunter, for that introduction. It's great to be here at BMW today.

As a New Jerseyan, I am proud that BMW has chosen to locate its North American corporate headquarters in my home state. And as an American, I am proud that right here in Spartanburg County, you are crafting some of the world's finest automobiles for export to more than 100 countries around the globe – made by Americans right here in America.

There's no doubt that you don't just build The Ultimate Driving Machine, you are also in the driver's seat when it comes to promoting responsible corporate environmental citizenship. When EPA welcomed BMW as a charter member of our National Environmental Performance Track program in 2000, we were recognizing your long record of environmental stewardship – a record on which you are building today.

In just a short time, you have met or exceeded nearly all the commitments you made when you joined Performance Track.

You have cut the energy you use to manufacture each vehicle by 50 percent – more than twice as big a savings as set in your original goal.

You have reduced the hazardous solid waste from solvents used in the factory by more than 30 percent – nearly three times as much as you committed to do.

And now you're driving down greenhouse gas emissions through the development of the landfill gas utilization project we are unveiling today.

This project will take methane gas naturally produced in the Waste Management Palmetto Landfill and safely pipe it to this facility, where it will fill about 20 percent of your current electric energy needs. This is a win-win for everyone. It avoids the need to burn methane at the landfill. It yields significant amounts of clean energy. And, by avoiding 55,000 tons of carbon dioxide emissions each year, it results in cleaner, healthier air for everyone to breathe.

This important environmental effort owes a great deal to a lot of people who have truly worked as partners to make this happen – here at BMW, at the South Carolina Energy Office, at Waste Management, and Ameresco. I want to thank all of them for their commitment and dedication to protecting our environment – and in just a few moments, we'll give them a more tangible token of our appreciation.

I should also point out that EPA's own Landfill Methane Outreach program also played a key role in putting together this project. Through this voluntary program, we've helped launch more than 200 landfill gas-to-energy projects across the United States. Taken together, the greenhouse gas reductions these projects have achieved bring about the same benefit as planting 14 million acres of trees – without having to worry about who's going to rake the leaves.

Here at BMW, you are used to being in the lead – whether behind the wheel of a Z4 or behind progressive environmental policy making. You are setting a pace I hope other corporate citizens will try to match.

I know you're used to looking at your competition through the rear view mirror. However, when it comes to responsible corporate environmental citizenship, that's one race where, when we're all moving forward together, everyone's a winner.

Thank you, and congratulations.

ATTACHMENT 2

**THE STATE OF SOUTH CAROLINA
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

**IN RE: BMW MANUFACTURING CORP.
SPARTANBURG COUNTY**

**CONSENT AGREEMENT
03-12-HW**

BMW Manufacturing Corp. (BMW), located in Spartanburg County, South Carolina, is an automobile manufacturer. During its operations, BMW generates solid and hazardous wastes and is responsible for compliance with the applicable laws and regulations requiring the proper management of those wastes.

The Department of Health and Environmental Control, Bureau of Land and Waste Management ("Department"), and BMW concur that in the interest of resolving this matter without delay and expense of litigation, BMW agrees to the entry of this Consent Agreement, but neither agrees with nor admits the Findings of Fact or the Conclusions of Law; and therefore, agrees that this Agreement shall be deemed an admission of fact and law only as necessary for enforcement of this Agreement by the Department.

FINDINGS OF FACT

1. On July 23, 2001 and July 24, 2001, representatives of the South Carolina Department of Health and Environmental Control (Department) and the United States Environmental Protection Agency (EPA) conducted an inspection of BMW to determine compliance with the South Carolina Hazardous Waste Management Regulations, 25 S.C. Code Ann. Regs. 61-79 (Supp. 2000) (SCHWMR), promulgated pursuant to the South Carolina Hazardous Waste Management

Act, S.C. Code Ann. §44-56-30 (1976), and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., and the regulations promulgated thereunder. During the inspection, the Department recorded the following findings and observations relative to the SCHWMR.

2. BMW disposed of 9,245 pounds of waste as a non-hazardous waste. A waste profile sheet for that waste indicated a flashpoint of 130 degrees Fahrenheit. BMW contends that the waste is a solid waste and not a hazardous waste as provided for in R.61.79.261.21 (1) and as demonstrated by the fact that six (6) previous profiles and eight (8) subsequent profiles of this same waste stream indicated a flash point at or above 140 degrees Fahrenheit.
3. Two 55-gallon drums of hazardous waste were stored in BMW's waste storage building. The building has concrete floors with an epoxy coating and curbing to ensure containment. The floor is adequately sealed, but a few chips were noted in the sealant near the floor grates.
4. A review of the weekly container inspection logs revealed modifications to the form were necessary, because there was incomplete or missing information regarding repairs and inspection times.
5. Due to pollution prevention measures incorporated into their plant design, its materials (e.g., waterborne paints) and best management practices, BMW minimizes the generation of waste purge solvent. All waste purge solvent generated by BMW is collected and sent off site for recycling, reuse or energy recovery. After the initial purging of the clear coat spraying operation, the resulting purge solvent is conveyed to a 30-gallon vessel, from which it is recirculated back through the lines in a continuous recirculation loop. When this recirculation loop becomes full, the material is then collected in an 80-gallon storage tank and then flows to a 550-gallon tote

container. BMW, as a result of its process, has no outside purge solvent storage tanks or piping. BMW indicates that this is different from most of the other plants in the automobile manufacturing industry.

6. According to a general regulatory guidance memorandum developed by EPA's Office of Solid Waste and Emergency Response, EPA takes the position that the purge solvent becomes a hazardous waste under RCRA and the regulations promulgated thereunder when it exits the paint applicators, because it has been "used for its intended solvent purpose" – removing excess paint and cleaning the paint gun, nozzle or bell. The Department has reviewed the guidance material on this issue and relevant regulations on used and spent material. Based on this review, the Department determined that the material in the recirculation loop has not been disposed of, abandoned, or thrown away (as required to meet the definition of a spent material). BMW has stated that if this material were not recirculated, then the company would have to use many times the volume in virgin solvent to assure the lines remain functional. Since this material is not spent material and is still being used for its solvent properties, the Department has determined that it falls under the "continued use" policy and is not regulated under the SCHWMA or the SCHWMR. Rather, once this material has exited the recirculation loop, the Department has determined it is regulated under the SCHWMR.
7. USEPA has noted concern over the potential for abuse of the "continued use" policy. Therefore, the use must be legitimate for the resulting solvents used by BMW to be excluded from the regulations. The Department finds that BMW's use is legitimate for the following reasons. First, there is no excessive use of the resulting solvent. The material is recirculated within a continuous loop that consists of a 30-gallon vessel and piping with additional capacity of

approximately sixty-four (64) gallons. Second, the resulting solvent is not being recirculated to bypass some regulatory scheme. The BMW process is serving a valid purpose and complies with the appropriate requirements after recirculation. Finally, the resulting solvent is an effective agent used to maintain the lines free of clearcoat accumulation and blockage. Many times the volume of virgin solvent would be added to this line if the resulting solvent were not recirculated and the amount of hazardous waste eventually generated would multiply considerably.

8. BMW first contacted the Department in February of 2000 to obtain guidance on the issue of the solvent and was informed Subparts BB, CC and J of the SCHWMR (R.61-79.265) did not apply to BMW. During a May 2000 inspection, the Department requested S.C.R. 61-79.265 Subpart BB records for BMW's operations. BMW submitted an excerpt from a 1999 regulatory analysis report prepared by Clay Associates, Inc. The Department reviewed the process as described in the document. The Department, at that time, determined that S.C.R 61-79.265 Subpart BB was applicable only to the piping that conveyed waste from the purge solvent 30-gallon recirculation vessel to the 80-gallon storage tank. BMW disagreed with the Department's conclusion, maintaining that the solvent in question is still being used for its solvent properties to maintain the piping downstream of the recirculation loop, but voluntarily complied with the Department's decision.
9. Several other alleged deficiencies and observations were also noted during the inspection and these items were voluntarily addressed by BMW either during or subsequent to the inspection. BMW used the Corrective and Preventive Action procedure from its Environmental Management System and submitted a plan to EPA and DHEC within 5 working days of the inspection. The plan included specific actions to be taken, the responsible person and the agreed upon completion

date. BMW followed up with a confirmation letter in October 2001 when the last item was completed. The Department was pleased with the prompt manner in which BMW addressed the inspection issues. A settlement was issued on August 7, 2002, (see attachment 1) addressing the issues raised during the July 23, 2001 and July 24, 2001 inspections and stating that all issues were now resolved to the satisfaction of the Department.

10. In correspondence dated March 17, 2003, EPA reiterated its position concerning the EPA guidance regarding point-of-generation for used solvent.
11. Although the State of South Carolina and BMW disagree with the interpretation of EPA as to the recirculation loop area of BMW's facility, all parties are desirous of settling this dispute.

CONCLUSIONS OF LAW

Based on the foregoing findings, BMW is required to comply with the South Carolina Hazardous Waste Management Act, S.C. Code Ann §44-56-10 et seq. (2002) (the Act) and with the following section of the Act and the following regulations promulgated pursuant to the Act:

1. §44-56-130(2) (2002), in that BMW must comply with the procedures described in all regulations promulgated pursuant to the Act and determined to be applicable to its facility;
2. R.61-79.265.175(b)(1), in that BMW is required to operate a containment system with a base free of cracks or gaps that is sufficiently impervious to contain leaks and/or spills;
3. R.61-79.265.15(d), in that BMW is required to maintain complete logs for inspections of hazardous waste area as specified in the regulations;
4. R.61-79.262.34(a)(1)(ii)/265.1050, in that BMW as a generator accumulating hazardous waste onsite for 90 days or less without a permit or without having interim status, is required to comply with all requirements of Subpart BB-Air Emission Standards for equipment leaks,

pertaining to its ancillary piping conveying purge solvent to its recovery tank system from the point that the purge solvent becomes a waste;

5. R.61-79.262.34(1)(i)/265.1087(d), in that BMW, as a generator accumulating hazardous waste onsite for 90 days or less without a permit or without having interim status, is required to comply with applicable requirements of Subpart CC-Air Emission Standard for containers pertaining to its purge solvent container storage; and,
6. R.61-79.262.34(a)(1)(ii)/265.193(f) in that BMW, as a generator accumulating hazardous waste onsite for 90 days or less without a permit or without having interim status, is required to comply with applicable requirements of Subpart J – Tank Standards for ancillary equipment, pertaining to its purge solvent recovery tank system.

NOW THEREFORE, IT IS AGREED that pursuant to S. C. Code Ann. §§44-56-40, 44-56-130, and 44-56-140 (2002), BMW agrees to the following:

1. For purposes of settling this dispute regarding the point-of-generation, BMW agrees to implement the following actions that EPA contends are necessary to demonstrate compliance, although BMW continues to disagree with EPA's interpretation of the point-of-generation as explained further above.
 - a. By July 1, 2003, BMW will remove the 80-gallon tank from service and will discharge purge solvent directly to a DOT approved container. The Department believes that once the modifications as outlined above are complete, EPA's concerns regarding compliance with Subpart J should be satisfied and no further action should be required of BMW relating to the purge solvent issue.

- b. By July 1, 2003, BMW will extend its Subpart BB compliance program to include those sections of the purge solvent piping between the locations where EPA contends the purge solvent becomes a waste. The Department believes that once this modification as outlined above is complete, EPA's concerns regarding compliance with Subpart BB should be satisfied and no further action should be required of BMW regarding the purge solvent issue.
2. BMW will continue to remain in compliance with all applicable portions of the South Carolina Hazardous Waste Management Regulations.

IT IS FURTHER AGREED that this Consent Agreement supercedes "Settlement in Re: BMW Manufacturing Corporation" executed on August 7, 2002, and attached hereto, and that document is void upon execution of this Consent Agreement.

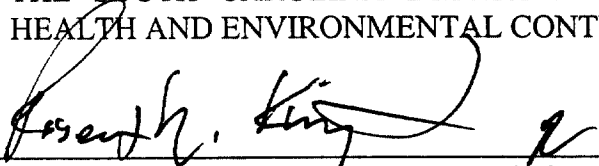
IT IS FURTHER AGREED that the issuance of this Consent Agreement adequately addresses and resolves all alleged hazardous waste management violations for BMW arising from the July 23-24, 2001, inspection by the Department and EPA, pursuant to the SCHWMR as referenced in Findings of Fact (paragraph 1) above.

IT IS FURTHER AGREED that if there is a revision to EPA's and the State's interpretation, policy and regulations (whether by agency action or judicial order) with regard to S.C.R. 61-79.265 Subparts BB, CC, and J that benefit the automobile manufacturing industry and BMW meets the requirements of the revision, the Department and BMW will review and amend this Order as necessary.

IT IS FURTHER AGREED that failure to comply with the terms of this Agreement shall be deemed a violation of the South Carolina Hazardous Waste Management Act, as amended. Upon ascertaining any such violation, the Department may initiate appropriate action to obtain compliance with both this Settlement and the aforesaid Act.

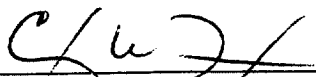
THE SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

DATE: 4/30/03
Columbia, South Carolina

BY: 
R. Lewis Shaw, Deputy Commissioner
Environmental Quality Control

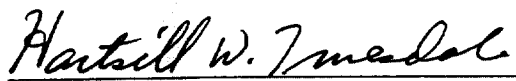
WE AGREE

BMW MANUFACTURING CORP.

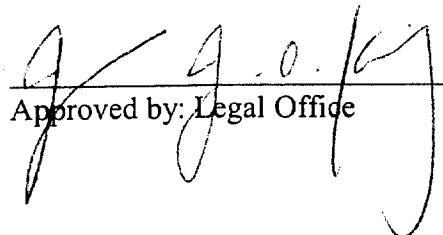

Carl W. Flesher, Vice President

DATE: 4/30/03

THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL


Hartsill W. Truesdale, P.E., Chief
Bureau of Land and Waste Management

DATE: 04/30/03


Approved by: Legal Office

DATE: 4/29/2003