

Georgia Department of Natural Resources
Environmental Protection Division

2 Martin Luther King Jr. Drive, Suite 1152, Atlanta, Georgia 30334
Judson H. Turner, Director
(404) 656-4713

October 11, 2013

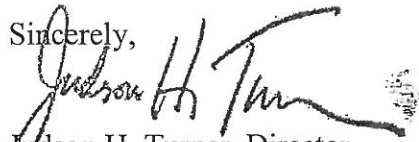
Rheem Manufacturing Company
Att: General Counsel
1100 Abernathy Road, Suite 1400
Northpark Building 500
Atlanta, GA 30328

Re: Consent Order No. EPD-VRP-007
Rheem Manufacturing Company
Milledgeville, GA

Dear Sir:

The attached Consent Order EPD- VRP-007 is executed. Consent Order EPD-HW-667 is now superseded in its entirety and replaced by the attached Order. The Rheem Manufacturing Company site located in Milledgeville, Georgia is now a participant in the Georgia Voluntary Remediation Program. If you have questions or EPD can be of further assistance, please contact Derrick Williams of my staff at 404 657-8606.

Sincerely,



Judson H. Turner, Director
Georgia Environmental Protection Division

CC: John Johnson, Troutman Sanders

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**STATE OF GEORGIA
DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION**

IN RE:)	
Rheem Manufacturing Company)	
138 Roberson Mill Road)	Consent Order No. EPD-VRP-007
Milledgeville, Georgia)	
)	
RESPONDENT)	

CONSENT ORDER

WHEREAS, Rheem Manufacturing Company (hereinafter the "Respondent") is the current owner of certain real property on which Respondent formerly operated a manufacturing facility, located at 138 Roberson Mill Road, Milledgeville, Georgia, comprised of approximately 41.13 acres and identified as Tax Parcel LD. No. M52-001 (hereinafter the "Property"); and

WHEREAS, on September 19, 1988, the Respondent notified the Environmental Protection Division (hereinafter "EPD") of a release of an unknown amount of trichloroethene ("TCE") from an underground pipe connecting a distillation unit and a storage tank (hereinafter the "Release") on the Property; and

WHEREAS, trichloroethene is a hazardous waste or hazardous constituent under the Georgia Hazardous Waste Management Act, O.C.G.A. Section 12-8-60 et seq., as amended (hereinafter "HWM Act"), and a hazardous substance under the Georgia Hazardous Site Response Act, O.C.G.A. Section 12-8-90 et seq., as amended; and

WHEREAS, on September 26, 1991, the Respondent and EPD entered into Consent Order No. EPD-HW-667 under the HWM Act requiring Respondent to implement corrective action with respect to the Property; and

WHEREAS, the Respondent had voluntarily begun to implement corrective action on the Property prior to issuance of Consent Order No. EPD-HW-667 and has continued to implement corrective action thereafter in accordance with plans approved by EPD; and

WHEREAS, on December 29, 2010, the Respondent submitted to EPD an application, including a Voluntary Investigation and Remediation Plan (hereinafter the "VIRP"), for enrollment of the Property into the Georgia Voluntary Remediation Program (hereinafter the "VRP"), established under the Georgia Voluntary Remediation Program Act, O.C.G.A. Section 12-8-100 et seq., as amended (hereinafter "VRP Act"); and

WHEREAS, at the request of EPD, on October 10, 2012, the Respondent submitted to EPD an updated VRP application for the Property;

WHEREAS, at the request of EPD, on April 17, 2013, the Respondent submitted to EPD a supplement to the VRP application for the Property;

WHEREAS, EPD has determined that the Property is eligible for enrollment into the VRP; and

WHEREAS, the Respondent and EPD desire to enable Respondent's participation in the VRP with respect to the Property; and

NOW, THEREFORE, it is hereby ORDERED by the Director and CONSENTED to by the Respondent, as follows:

1. As of the date of execution of this Order, Consent Order EPD-HW-667 is superseded in its entirety and replaced with this Order, and as this Order may be amended.
2. Upon execution of this Order, Respondent's VRP application and VIRP, as updated on October 10, 2012, and supplemented on April 17, 2013, are approved and the Property shall be deemed enrolled in the VRP.
3. Under the VRP, and subject to any relevant modifications thereto, the Respondent must comply with the following schedule for delineation and remediation of the Release, submission of a compliance status report, and submission of financial assurance as required by EPD under the VRP Act, subject to modifications and extensions granted in writing by EPD, such modifications and extensions not to be unreasonably denied:
 - a. The Respondent must submit progress reports to EPD semi-annually, or at such longer interval as EPD may approve, pursuant to Section 12-8-107(b) of the VRP Act, as amended, with the first report due by the end of the sixth full month after the effective date of this Order.
 - b. Within the first twelve (12) months after the date of execution of this Order, the Respondent shall complete horizontal delineation of the Release and associated constituents of concern on property where access is available as of the date of execution of this Order.
 - c. Within twenty four (24) months after the date of execution of this Order, the Respondent shall complete horizontal delineation of the Release and associated constituents of concern extending onto property for which access was not available as of the date of execution of this Order.
 - d. Within three (3) months after completion of Condition 3.c., if regulated substances are detected on a non-qualifying property, Respondent shall either (1) apply to EPD to include such property as a qualifying property under the VRP Act, if Respondent wants to include such property as a qualifying property under the VRP Act, or (2) notify EPD that such property is not included as a qualifying property under the VRP Act.
 - e. Within thirty (30) months after the date of execution of this Order, the Respondent shall update the CSM to include vertical delineation, finalize the VIRP and provide a cost estimate for implementation of remediation and associated continuing actions.

- f. Within sixty (60) months after the date of execution of this Order, or other later date approved by the Director, e.g., if the Director concurs that completion of corrective action cannot feasibly be achieved within sixty (60) months after the date of execution of this Order, the Respondent shall submit the compliance status report, including the requisite certifications, required under the VRP Act.
 - g. Within sixty (60) days after the date of execution of this Order, the Respondent shall submit a cost estimate to EPD to complete the work proposed in the VRP application through submittal of the compliance status report. This estimate shall be based upon independent third party costs.
 - h. Within ninety (90) days after the date of execution of this Order, the Respondent shall provide EPD a financial assurance mechanism to reflect all costs identified in the cost estimate in Condition 3.g. and submit it to EPD. The financial assurance mechanism shall be modeled after the language and mechanisms in 40 CFR 264 Subpart H, and shall be subject to EPD's acceptance.
 - i. Within ninety (90) days after submittal of the final VIRP (or subsequent material revision) to EPD, the Respondent shall update the financial assurance mechanism to reflect all remaining costs identified in the remediation plan and submit it to EPD. The financial assurance mechanism shall be modeled after the language and mechanisms in 40 CFR 264 Subpart H, and shall be subject to EPD's acceptance.
 - j. Within sixty (60) days after Respondent's receipt from EPD of an invoice for any costs to EPD in reviewing the VRP application and subsequent documents that exceed the initial VRP application fee, Respondent shall reimburse EPD for such costs, provided the invoice includes a reasonably detailed itemization and justification for those costs.
4. The Respondent and one or more registered professional geologists or engineers shall be responsible to oversee the implementation of the VIRP in accordance with the provisions, purposes, standards, and policies of the VRP Act. EPD may, at its sole discretion, review and comment on documents submitted by the Respondent. However, failure of EPD to respond to a submittal within any timeframe does not relieve the Respondent from complying with the specified schedule and the provisions, purposes standards and policies of the Act and Order.
 5. EPD's approval of the VIRP extends only to those technical aspects of the document that expressly require EPD approval under applicable rules and statutes. This approval is not an endorsement by EPD that it accepts as conclusive any representations made in the document. Nor does EPD guarantee or warrant that the document is free of errors or omissions. EPD may later withdraw approval of the VIRP in whole or in part, if EPD reasonably determines that withdrawal is necessary to ensure compliance with applicable statutes and rules.

6. This Order shall terminate if and as of the date the Director concurs under Section 12-8-107(e) of the VRP Act, as amended, with the Respondent's certification that the Property complies with applicable cleanup standards.
7. Enrollment of the property in the VRP shall terminate (hereinafter the "Termination Date") sixty (60) days after either the Director or the Respondent provides written notification to the other party that enrollment of the Property in the VRP is being terminated, as provided in Section 12-8-107(d) of the VRP Act, as amended. As of the Termination Date, the Conditions set forth in Attachment A shall be incorporated into and replace Conditions 2 through 6 of this Order (with the conditions renumbered, as appropriate), subject to any further amendment of the Order as may be agreed to by the parties.
8. Unless otherwise provided in this Order, the following notice provisions shall apply:
 - a. Notifications, submissions or other communications required by this Order, shall be made in writing and addressed as follows:

As to the Respondent:

Rheem Manufacturing Company
Attn: General Counsel
1100 Abernathy Road, Building 500, Suite 1400
Atlanta, Georgia 30328

With a copy to:

Troutman Sanders LLP
Attn: John H. Johnson
Bank of America Plaza
600 Peachtree Street, Suite 5200
Atlanta, Georgia 30308

As to EPD:

Response and Remediation Program
Attn: Program Manager
2 Martin Luther King Jr. Boulevard, Suite 1054
Atlanta, Georgia 30334

- b. Either party may, by written notice to the other party, change its designated representatives for receipt of notice or its notice address.
- c. For purposes of the VRP deliverables referenced in Condition 3 hereof, EPD's receipt of a deliverable by the specified milestone due date via U.S. Mail, courier or hand delivery, or EPD's receipt of an electronic transmittal of a copy of the deliverable by the specified milestone due date confirming that the deliverable has

been sent via U.S. Mail, courier or hand delivery, shall constitute timely submission of the deliverable under the VRP.

9. The individual signing this Order for the Respondent is duly authorized to enter into and bind the Respondent to the terms of the Order.

For purposes of enforcement under any applicable State Law, this Order shall be construed as and shall have the same force and effect as a final Order of the Director pursuant to the HWM Act, as amended, and the VRP Act, as amended.

By entering into this Order or by taking any action in accordance with this Order, the Respondent does not admit any fact, conclusion of law, or allegation contained in the Order. The Respondent does not admit liability for any purpose, nor admit any liability or responsibility for the conditions at the Property, any allegation of negligence, wrongdoing or fault relating to the Property, or any allegation of wrongful conduct relating to the Site under any federal, state or local laws or regulations, and this Order shall not be admissible by any third party for any purpose in any judicial or administrative proceeding.

This Consent Order shall be signed first by the Respondent and shall be deemed executed when signed by the Director of EPD.

It is so ORDERED, CONSENTED, AND AGREED to this 8th day of October 2013 (to be filled in by the Director upon his signature)

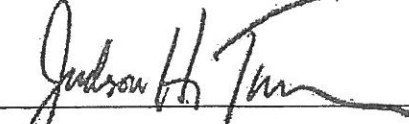
**FOR THE RESPONDENT,
RHEEM MANUFACTURING COMPANY**

By: 

TITLE: Vice President

DATE: 7-23-2013

**FOR THE ENVIRONMENTAL
PROTECTION DIVISION**



Judson H. Turner, Director
Environmental Protection Division
Department of Natural Resources
State of Georgia

ATTACHMENT A

CONTINGENT CONDITIONS OF CONSENT ORDER NO. EPD-HW-^{VRP-007}_____, UNDER
THE GEORGIA HAZARDOUS WASTE MANAGEMENT ACT

1. After the Termination Date, the Respondent shall continue to implement corrective action measures, including but not limited to routine inspection, operation and maintenance, prescribed groundwater monitoring and reporting, and other institutional controls, as applicable, in accordance with the then-current VIRP until the Supplemental Corrective Action Plan ("Supplemental CAP") required by Condition 3 is approved by EPD.
2. Within sixty (60) days after the Termination Date, the Respondent shall submit a RCRA Facility Investigation Report (hereinafter "RFI Report") to EPD. The RFI Report shall provide a completed delineation of the horizontal and vertical extent of contamination for all hazardous constituents from the Release on the Property in all applicable media (i.e. soil, groundwater, surface water, etc.) to background concentrations, or alternative concentrations approved by EPD, in accordance with the most recent publication of USEPA's Region 4 SEDS "Field Branches Quality System and Technical Procedures".
3. Within ninety (90) days after RFI Report approval by EPD, Respondent shall submit to EPD a Supplemental CAP that describes the actions Respondent has taken and, as necessary, will take to comply with the requirements of the HWM Act and Rules with respect to the Release.
4. The Supplemental CAP shall describe in detail actions the Respondent will take, as applicable, with respect to the Release to achieve RCRA Remediation Levels as defined in the EPD Guidance for Selecting Media Remediation Levels at RCRA Solid Waste Management Units (dated November 1996), or alternative remediation levels approved by EPD, for contaminated media (i.e. source material, soil, sediment, groundwater, surface water, and vapor intrusion/air), including but not limited to:
 - a. Actions to remove and/or treat in place contaminated source material, soil, and sediment;
 - b. Actions to remove and/or treat in place contaminated groundwater and surface water;
 - c. Actions to implement a monitoring program capable of demonstrating the effectiveness of the corrective action program;
 - d. Actions to conduct routine inspections of the corrective action system;
 - e. Actions to implement and maintain institutional controls, as applicable;
 - f. A schedule of implementation for the activities described in the Supplemental CAP;
 - g. A detailed cost estimate for implementation of the additional corrective action;

- h. Installation and operation of corrective action measures if and as needed to mitigate the release of hazardous waste, hazardous constituents or hazardous waste constituents to the environment;
 - i. Installation and operation of a corrective action measures if and as needed to preclude further migration of the contaminant plume; and
 - j. Treatment, storage and disposal of all contaminated media in accordance with all applicable federal, state, and local laws.
- 5. The cost estimate in the Supplemental CAP shall specify individual costs (e.g., capital costs, sample collection, sample analysis, operator time, parts and supplies, routine repairs, additional institutional controls, inspection cost, corrective action effectiveness reporting, etc.) and assume all activities are conducted by an independent third party. The cost estimate should be based on the estimated time needed to complete corrective action for thirty (30) years if the time needed to complete corrective action is greater than thirty (30) years.
- 6. Upon EPD's written approval of the Supplemental CAP, the Respondent shall implement the Supplemental CAP in accordance with the schedule contained therein.
- 7. The Respondent shall submit proof of financial assurance that meets the requirements of Section 391-3-11-.05 of the Rules to EPD for the cost estimate contained in the Supplemental CAP within ninety (90) days after the Supplemental CAP is approved.
- 8. Upon implementation of the approved Supplemental CAP, a Corrective Action Effectiveness Report (CAER) must be submitted to EPD in accordance with the schedule and provisions contained within the approved Supplemental CAP. The CAER must address all corrective action being conducted with respect to the Release for each contaminated media (i.e. source, soil, sediment, groundwater, and surface water) identified at the Property. The report must include an estimate of the remaining time needed until soil and groundwater Remediation Levels, as defined in the Supplemental CAP, will be met.
- 9. All plans, reports, schedules, and submittals (hereinafter "Document(s)") required by the terms of this Order, as amended, are upon written approval by EPD, incorporated into this Order, as amended. Any noncompliance with such approved Documents shall be termed noncompliance with the Order, as amended. A Document or payment required by this Order, as amended, must be received by EPD before 4:30 p.m. EST on the date the Document or payment is due as set forth herein or as such due date may be extended by EPD. To the extent that the Document or payment required pursuant to this Order, as amended, is due on Saturday, Sunday, or a state- recognized holiday, such Document or payment shall be due on the immediate subsequent business day. For purposes of this Order, EPD's receipt of the Document or payment by the due date via U.S. Mail, courier or hand delivery, or EPD's receipt of an electronic transmittal of a copy of the Document or payment by the due date confirming that the Document or payment has been sent via U.S. Mail, courier or hand delivery, shall constitute timely submission of the Document

or payment. Failure to submit in accordance with the said time frame will be considered a violation of this Order, as amended.

10. Respondent shall be liable for stipulated penalties payable to EPD as set forth below for failure to comply with the Conditions of this Order, as amended, unless excused by the Director.

- a. The following stipulated penalties shall be payable to EPD per violation per day for material violations of the Conditions of this Order, as amended:

Penalty Per Violation Per Day	Period of Noncompliance
\$100	1 st through 14 th day
\$250	15 th through 30 th day
\$500	31 st day and beyond

- b. Any penalty accruing under this Condition shall be due and payable to the State of Georgia, Environmental Protection Division. The right to collect stipulated penalties shall not preclude EPD from taking any other action authorized by law for violations of the Rules or this Order, as amended, or for any other violation of the Act, or of the Rules promulgated thereunder, or an order of the Director. If the Director is required to undertake judicial proceedings to recover stipulated penalties, the Director will not be barred from seeking civil penalties in an amount greater than the stipulated penalties due thereunder.
- c. If Respondent fails to pay the accrued stipulated penalties when due and payable pursuant to Condition 10.e., nothing in this Order, as amended, shall prevent or preclude the Director from initiating a proceeding for civil penalties for the noted violations.
- d. If EPD believes Respondent has materially failed to perform any of the activities contained in this Order, as amended, then EPD shall provide written notification to Respondent of any such deficiencies and shall allow Respondent a reasonable period of time, to be specified in the written notification, to correct such deficiencies before EPD performs all or any portion of the work.
- e. No stipulated penalty shall accrue until such time as EPD provides, by certified mail return receipt requested, written notice of the violation to Respondent's designated representative. EPD's written notice shall also specify when payments of such stipulated penalties shall be due, which shall in no event be less than thirty (30) days from the date the written notice is received by Respondent.
11. If at any time EPD determines that any element of any draft or approved Document required by this Order, as amended, should be modified in order to meet the requirements established by this Order, as amended, EPD shall provide the Respondent with written

notification of such a determination by certified mail return receipt requested, specify the basis for making such determination and request modification and resubmittal of a modified Document in accordance with a reasonable schedule specified by EPD, which shall in no event be less than thirty (30) days from the date the written notification is received by Respondent. If at any time the Respondent determines that any element of any draft or approved Document required by this Order, as amended, should be modified in order to meet the requirements established by this Order, as amended, the Respondent shall, within thirty (30) days of making such determination, modify and submit said Document to EPD.

12. Failure to submit a Document may be considered by EPD to be failure to comply with this Order, as amended, but the submission of a Document deemed deficient by the Director shall not be construed as a failure to submit a Document, unless the Document is so deficient that it amounts to no submittal at all.
13. Failure to comply with a Condition of this Order, as amended, within the time period specified shall be excused and not subject Respondent to enforcement action, including without limitation, an action for the assessment of stipulated penalties, if the failure is the result of a Force Majeure event as identified below and Respondent complies with the requirements set forth below. Respondent shall have the burden of proving to EPD that it was rendered unable, wholly or in part, by Force Majeure to carry out its obligations.

The term "Force Majeure" as used herein shall mean the following: Act of God; strike, lockout, or other labor or industrial disturbance not caused by an unfair labor practice by Respondent; act of the public enemy; war; blockade; public riot; fire; storm; flood; extreme weather; explosion; equipment failure or malfunction despite use of appropriate operation and maintenance practices; failure to secure timely and necessary federal, state, or local approvals or permits, provided such approvals or permits have been timely and diligently sought; or other delay caused by unforeseeable circumstances beyond the reasonable control of Respondent, its employees, agents, consultants, or contractors. Force Majeure does not include financial inability to perform an obligation required by this Order, as amended, or a failure to achieve compliance with applicable regulatory permits.

Respondent shall notify EPD verbally within forty eight (48) hours (or no later than the beginning of the next business day if the expiration of the forty eight (48) hours occurs on a weekend or holiday) from the time Respondent learns, or in the exercise of reasonable diligence should have learned, of any Force Majeure circumstances that may reasonably be expected to cause a material schedule or performance delay. Within ten (10) days of such time, Respondent shall submit to EPD a written notice of the anticipated length (if known) and cause of any delay due to Force Majeure. Failure to so notify EPD shall constitute a waiver of any claim of Force Majeure.

Respondent and EPD agree to negotiate informally and in good faith to identify delays resulting from Forces Majeure. If EPD determines that Force Majeure has occurred, the affected time for performance specified in this Order, as amended, shall be extended for a

period of time equal to the delay resulting from such Force Majeure. Respondent shall exercise due diligence and adopt all reasonable measures to avoid or minimize any delay.

14. Notwithstanding compliance with the terms of this Order, as amended, the Respondent may be required to take further action to comply with applicable State or Federal Laws or any rules and regulations promulgated pursuant thereto.