



February 7, 2003

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 Correction – Information Quality Guidelines
BMW Manufacturing Corp.

Dear Evie:

It was a pleasure meeting with Kim, Alan and you on Wednesday. I appreciate your taking the time on such short notice to help me understand the new Request for Correction Process.

I learned from Kim that my e-mail submittal was lost, then found, and then discarded at my request. I think resubmitting the information using the suggestions you offered on Wednesday will greatly increase our chance for a successful outcome.

I have attached a Request for Correction and an attachment from our state agency verifying that the data is in error. If any additional information is required or would be helpful, please let me know.

Thanks again for your assistance with this. It's exciting to see this very worthwhile program launched within the Agency. If the opportunity presents itself, I'll compliment Gov. Whitman on this during the Performance Track meeting coming up in early April.

Yours truly,

BMW Manufacturing Corp.

A handwritten signature in black ink, appearing to read 'Gary'.

Gary Weinreich
Environmental Services Manager

Enclosures: Request for Correction, Attachment A (DHEC Settlement)

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Request for Correction Under The Information Quality Guidelines
BMW Manufacturing Corp.
February 7, 2003

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Discussion of Information That Does Not Comply with OMB and EPA Information Quality Guidelines

The EPA Enforcement Compliance History Online (ECHO) database, the Sector Facility Indexing Project (SFIP) database, and other EPA compliance databases currently contain compliance data showing BMW Manufacturing Corp. (BMW) as being in Significant Non-Compliance (SNC) of the Resource Conservation and Recovery Act (RCRA). This information can be viewed at the following URLs.

For ECHO Database:

<http://www.epa.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=SC0000110288>

For SFIP Database

<http://www.epa.gov/cgi-bin/getSFI1c.cgi?IDNumber=AUT.SC0053&tool=SFI>

This information posted on these websites is incorrect and fails to meet EPA and OMB Information Quality Guidelines in all four criteria: accuracy, integrity, utility and reproducibility. Each is explained in detail below.

COMPANY BACKGROUND

BMW is a Charter Member of EPA's National Environmental Performance Track and the South Carolina Environmental Excellence Program. BMW is a recognized leader in environmental stewardship and sustainable business values within the automobile industry. State and federal regulators frequently call on BMW to mentor others on environmental management topics.

BMW has not had a fine or notice of violation in the 10-year history of the company. Additionally, the company's environmental performance is consistently better than minimum regulatory requirements in every measurable parameter. The company improves its performance annually through the implementation of its environmental management system and specific improvement projects. The results are reported in the company's environmental reports to the public (www.bmwusfactory.com) and through their Community Advisory Panel.

ARE OMB's AND EPA's CRITERIA FOR DATA "ACCURACY" MET?

EPA staff responsible for populating data in compliance web sites have chosen to list BMW as a Significant Non-Complier. This data is inaccurate. BMW has been **confirmed** to be in full compliance with RCRA by the state agency to which EPA delegated authorization to implement hazardous waste regulations in the state (See Attachment A).

EPA staff, however, contends that BMW (and every other automobile manufacturing plant in the U.S.) is in violation of an EPA *guidance memorandum* that is currently in litigation in the U.S. District Court of Appeals for the District of Columbia Circuit, which has agreed to hear the case (General Motors Corporation v. U.S. Environmental Protection Agency, No. 02-1242).

EPA staffs, at both the regional and national levels, have confirmed that the dispute involves **no environmental performance consequences**. Given the fact that there are 1) no environmental consequences, 2) the authorized state agency evaluated compliance status in great detail, and 3) the state agency issued a fully documented regulatory determination of compliance, the data posted in the EPA databases clearly fails to meet the **accuracy** criteria established by EPA and OMB.

ARE OMB's AND EPA's CRITERIA FOR DATA "INTEGRITY" MET?

EPA first attempted to enforce the "general guidance" memo in question in 1999. Since that time, the automobile industry and many authorized states with automobile plants have attempted to resolve the legal conflicts that the guidance creates. In fact, the division originally issuing that guidance (OSWER) recently streamlined these same regulations, completely eliminating the burdens. The enforcement branch of the agency, however, continues to insist that EPA has the "right to enforce" based on the now-obsolete general guidance and has sought penalties and violations from *each and every automobile manufacturing plant in the United States* through a settlement agreement.

In a few instances (including BMW), regional office staff has chosen to randomly post individual companies that refused to sign the settlement agreement in Non-Compliance or Significant Non-Compliance over this issue. This was done with full knowledge that the underlying guidance does not carry the full weight of rulemaking, and that many of the authorized states disagree with the broad application of the general guidance as if it were regulation.

This appears to have been done without any consistency or accountability among companies or regions, except with regard to whether the company in question signed the settlement agreement.

As a result, the compliance database is being used to force individual companies to accept EPA's position and sign the settlement agreement based on a foundation that states and industry contend is illegal. Using the ECHO compliance database as leverage to force signing a settlement agreement clearly violates the data **integrity** standards of OMB and EPA in that the database is not presenting facts, but trying to bolster it's position in a dispute.

ARE OMB's AND EPA's CRITERIA FOR DATA "UTILITY" MET?

Listing BMW and other automobile manufacturers in either Non-Compliance or Significant Non-Compliance over this issue violates the objective for data *utility*. The ECHO database is intended to provide "useful" compliance information to the public. Listing a company with exemplary environmental performance in Non-Compliance or Significant Non-Compliance undermines the usefulness of the entire database.

EPA's definition of Significant Non-Compliance is:

1. Actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents,
2. Chronic or recalcitrant violators, or
3. Substantial deviation from the terms of a permit, order, agreement, or from RCRA statutory or regulatory requirements.

It is clear that BMW's situation meets **none** of these criteria. There is no exposure or potential exposure, there are no chronic violations or recalcitrant behavior, and there is no substantial deviation (or according to the attachment, any deviation whatsoever) from terms of a permit, order, agreement or RCRA statutory or regulatory requirements. By virtue of Attachment A, the possibility of a deviation from the *guidance memorandum* has been completely eliminated as well.

In short, the *utility* of the database is seriously deteriorated when it becomes impossible to determine which regulated entities are in compliance and which are not. This has been a frequent comment received by EPA during the comment period on the ECHO database.

ARE OMB's CRITERIA FOR DATA "REPRODUCIBILITY" MET?

OMB's criteria for data *reproducibility* are clearly not met. The fact that EPA's compliance determination (made on the basis of the guidance document) is completely opposite the authorized state agency's determination (based on a detailed site-specific determination using well-established hazardous waste rulemaking) is ample evidence that the data is not reproducible. The majority of the authorized states with automobile assembly plants have expressed disagreement with EPA's position on this as well.

EFFECTS OF THE DATA QUALITY ERROR

BMW is a member of many environmental achievement organizations and participant in numerous recognition programs as stated earlier. Continued membership requires an unblemished environmental performance record. This erroneous data places the company's continued membership in these organizations at considerable risk.

BMW has committed to performance beyond minimum governmental regulatory requirements as part of signed agreements with EPA. EPA, likewise, has agreed to certain incentives including less administrative burden and increased opportunity to focus on additional improvements. This data error violates EPA's commitments under the Performance Track program.

The public views BMW as a leader in environmental management and stewardship from the international level to the local level. Posting erroneous data on an internationally

accessible web page is clearly damaging to BMW's reputation as an environmental leader.

Posting compliance data that erroneously suggests that a member of the National Environmental Performance Track and the South Carolina Environmental Excellence Program is in Significant Non-Compliance calls into question the integrity and credibility of these recognition programs.

DO OMB DATA QUALITY GUIDELINES APPLY TO THIS DATA

The compliance data posted in the ECHO, SFIP and other agency databases clearly qualifies for review under the Information Quality Guidelines since all applicable criteria for review are met:

1. The data is disseminated by EPA to the public,
2. The information represents both "communication" and represents knowledge as "facts," and
3. Information was initiated and sponsored by EPA.

BMW HAS ATTEMPTED TO CORRECT THE DATA ERROR USING THE INTEGRATED ERROR CORRECTION PROCESS (IECP) WITHOUT SUCCESS

Several requests have been submitted to correct the data errors but without success. The latest request was submitted in November 2002. However, each request has been referred to the regional office and then referred back to the specific individual that originally posted the erroneous data. As expected, in each instance the accuracy was confirmed and the correction request denied. This has not been an objective data correction process.

An informal meeting was held with the regional office staff on December 18, 2002 as suggested by the Office of Environmental Information. BMW had presented eight questions about the data correction process, most of which were not answered.

At the meeting, an EPA enforcement attorney presented a settlement agreement and stated that it was the "only option" for correcting the data error.

SUMMARY

EPA's compliance information databases should not be used as tools to coerce compliant companies or their authorized state agencies into taking actions or reaching determinations that are questionable or suspect. Furthermore, intentionally listing companies in Non-Compliance or Significant Non-Compliance for the purpose of strengthening the agency's position in litigation are clear violations of Data Quality Guidelines.

BMW requests that all references to Non-Compliance and Significant Non-Compliance be deleted from the EPA's databases.

50114



10 Bull Street
Columbia, SC 29201-1708

August 9, 2002

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Ms. Jewell Grubbs, Chief
RCRA Enforcement and Compliance Branch
Waste Management Division
US EPA Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Ga 30303-8960

RE: BMW Corp
Spartanburg, South Carolina

Dear Ms. Grubbs:

The purpose of this letter is to transmit the Settlement the State of South Carolina has entered into with BMW Corp. BMW generates small amounts of used and waste purge solvent. All spent 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 used 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 collected in an 80-gallon tank and then flows to a 550-gallon tote container.

The main focus of this Settlement was the portion of the process that is "looped" from the 30-gallon vessel. Dimensionally, the "loop" is approximately 1100 feet in length and holds about 64 gallons of solvent material. After the used solvent exits this vessel, the State is in agreement that the solvent is considered spent and must be managed as a hazardous waste. Although BMW does not agree with this interpretation, they have complied with the requirements of BB, CC, and J since July 2000 for this part of their process.

According to regulatory guidance developed by EPA's Office of Solid Waste Emergency Response, the purge solvent becomes a waste 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 has reviewed guidance material on used and spent material. 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 virgin solvent to assure

Letter to Ms. Grubbs
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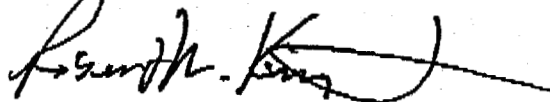
the lines remain functional. Since this material is not spent material and is still being used for its solvent properties, the Department has determined that it falls under the "continued use" policy and is not regulated under SCHWMR.

Appropriately, USEPA has noted concern over the potential for abuse of the "continued use" policy, and therefore, the use must be legitimate for the used solvents to be excluded from the regulations. First, in the case of BMW, there is no excessive use of the used solvent. As already noted, the material is collected and recirculated from a thirty-gallon vessel. The lines used in this "loop" hold approximately 64 gallons of used solvent. Second, the used 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 used solvent is an effective substitute in maintaining the lines. Virgin solvent would be added to this line if the used solvent were not recirculated.

We believe that the general guidance and interpretation EPA has provided on this issue has not taken into account the situation at BMW. In Ms. Cotsworth's (Acting Director, Office of Solid Waste, EPA) letter of July 29, 1997, she noted that her "letter was a general interpretation of the federal regulations and that authorized state agency are responsible for interpreting its own regulations and making site specific regulatory determinations." We have reviewed this situation at great length and for the above reasons have made the determination that this area of the process is not regulated because the solvent has not been disposed of, abandoned, or thrown away and that it appropriately falls under the "continued use" policy.

If you have any questions, please do not hesitate to contact us on this issue.

Sincerely,



Robert W. King, Jr.
Assistant Deputy Commissioner
Environmental Quality Control

Enclosure

cc: Hartsill Truesdale, SCDHEC

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

IN RE: BMW MANUFACTURING CORP.
SPARTANBURG COUNTY

SETTLEMENT

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.

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). During the inspection, the Department recorded the following findings and observations relative to alleged violations of 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. BMW generates 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 used 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.
4. According to regulatory guidance developed by EPA's Office of Solid Waste and Emergency Response, the purge solvent becomes a waste 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 has reviewed guidance material on used and spent material. 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 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 SCHWMR. Rather, once this material has exited the recirculation loop, the Department has determined it is regulated under the SCHWMR. USEPA has noted concern over the potential for abuse of the "continued use" policy. Therefore, the use must be legitimate for the used

solvents to be excluded from the regulations. The Department finds that the use is legitimate. First, there is no excessive use of the used solvent. The material is recirculated within a continuous loop that consists of a 30-gallon vessel and piping with additional capacity of approximately 64 gallons. Second, the used 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 used solvent is an effective substitute in maintaining the lines. Virgin solvent would be added to this line if the used solvent were not recirculated.

5. BMW first contacted the Department in February 2000 to obtain guidance on this issue and was informed Subparts BB, CC and J did not apply to BMW. During a May 2000 inspection, the Department requested Subpart BB records for BMW's operations. BMW submitted an excerpt from a 1999 report prepared by Clay Associates, Inc. The Department reviewed the process as described in the document. The Department, at that time, determined that 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 used solvent is still used for its solvent properties to maintain the piping downstream of the recirculation loop, but voluntarily complied with the decision.
6. Several other deficiencies were also noted during the inspection and were corrected by BMW either during or subsequent to the inspection.

AGREED TERMS

Based on the foregoing findings, BMW agrees to perform the following:

1. Immediately purchase laboratory equipment, as specified in one of the approved USEPA Testing Methodologies necessary to conduct flashpoint analyses in BMW's in-house laboratory .
2. Within forty-five (45) days of receipt of the equipment, analyze for flashpoint and manage accordingly each container of waterborne paint waste generated.
3. Continue to remain in compliance with all applicable portions of the South Carolina Hazardous Waste Management Regulations including applicable portions of Subparts BB, CC and J as they relate to the waste purge solvent once it exits the 30-gallon recirculation loop and flows towards the 550-gallon tote container for proper disposal.

It is further agreed that the issuance of this Settlement 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 failure to comply with the agreed terms 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: Aug 7, 2002
Columbia, South Carolina

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

WE AGREE

BMW MANUFACTURING CORP.

Carl W. Flesher
Carl W. Flesher
Vice President

DATE: 8/7/02