



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
B & V EXHAUST SYSTEMS INC.
FOR
IR 2012-P-2588**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and B & V Exhaust Systems Inc. for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b), and Va. Code §62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "B & V Exhaust" means B & V Exhaust Systems Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. B & V Exhaust is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "Facility" means the B & V Exhaust Systems Inc. facility located at 3904 D, Jefferson Davis Highway, Richmond, Virginia, which cleans commercial exhaust fans and restaurant filters for commercial customers.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
12. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. B & V Exhaust owns and operates B & V Exhaust located at 3904 D, Jefferson Davis Highway in Richmond, Virginia. B & V Exhaust cleans exhaust fans from commercial facilities, including restaurant filters.
2. On March 28, 2012, DEQ received an anonymous report of an unpermitted discharge of a potentially hazardous substance, sodium hydroxide solution, from B & V Exhaust to the ground and state waters. The sodium hydroxide solution was reported to discharge from a hose exiting the back of the building to a surface water located behind the business. The discharged sodium hydroxide solution and any rainwater in the surface water that collects in a ditch behind the building, drains toward and comingles with Grindall Creek.
3. Grindall Creek is located in the Lower James River Basin. During the 2010 305(b)/303(d) Integrated Water Quality Assessment, Grindall Creek was considered fully supporting with observed effects for the Fish Consumption Use due to a Virginia Department of Health (VDH) advisory for kepone. The Recreation, Aquatic Life, and Wildlife Uses were not assessed. The stream was not included in the Chesapeake Bay Total Maximum Daily Load (TMDL), which was approved by the EPA on 12/29/2010. It was also not addressed in the James River and Tributaries – City of Richmond Bacterial TMDL, which was approved by the EPA on 11/4/2010 and by the SWCB on 9/20/2012. Grindall Creek is considered a Tier 1 water.
4. DEQ staff notified the City of Richmond Codes Compliance, Fire Marshall, City Police, Hazmat, EPA and Occupational Safety & Health Administration (OSHA) of the unpermitted discharge. On April 2, 2013, officials from the City of Richmond Fire Marshall's Office, City of Richmond Code Enforcement, City of Richmond Police, City of Richmond Department of Public Works, Virginia Department of Labor and Industry, DEQ and EPA made an unannounced site inspection to investigate the reported discharge. Unit D was locked, and while waiting for the Unit to be opened, the officials inspected the back of the Unit. They observed that a hose extended through the back wall of the building, over an unsecured 275 gallon aboveground storage tank, and discharged into an adjacent waterway. The discharge from the hose emptied into the waterway or

ditch, which drains toward and eventually comingles with Grindall Creek. The officials observed that vegetation at the discharge point of the hose and along the perimeter of the ditch was brown and appeared to be dead. The ditch contained discolored dark water and the edges of the standing water in the ditch were coated with grease. There was a dark stained area between the building and the ditch where it appeared that a discharge from the hose to the ditch had occurred repeatedly. The 275 gallon tank located against the back wall contained liquid with a measured pH of 5.5 and was reported to contain spent cleaning solution.

5. When Unit D was unlocked, the officials entered the Unit for an inspection. The officials observed two tanks and assorted filters. One of the tanks contained the filter cleaning solution. There was a floor drain next to this tank. Residual liquid in the drain was measured to have a pH of 10.0. A sump pump was in the drain with an attached hose. The hose led across the unit and through a hole in the back wall of the building to the outside. The officials observed evidence of repeated discharges to the ditch from this hose.
6. During the April 2, 2012 site investigation, EPA collected water samples of the discharge from the surface water that had collected in the ditch, to test for metals and Oil and Grease. The surface water was tested and measured a neutral pH.
7. The test results from the water samples that EPA had collected and then analyzed on May 15, 2012, showed elevated levels of oil and grease at the collection sites indicating that a discharge had occurred. The metals test results were consistent with levels normally found in an industrial area.
8. On May 24, 2012, DEQ issued a Notice of Violation (NOV) No. 2012-05-PRO-203 to B & V Exhaust for the unpermitted discharge of sodium hydroxide solution to state waters.
9. On June 4, 2012, EPA and DEQ staff re-inspected the site. Cleanup actions had been completed. The exterior aboveground storage tank and hoses had been removed; and the contaminated soil had been removed. There was no evidence of further releases of the sodium hydroxide solution to the surface waters that had collected in the ditch.
10. On July 19, 2012, DEQ met with B & V Exhaust and discussed the violation cited in the NOV. The owner of B & V Exhaust stated that the discolored soil had been removed, the hose disconnected, provided receipts showing that the tanks containing the process wastewater had been pumped and hauled away, and receipt showing the discolored soil removal.
11. Va. Code § 62.1-44.5 states that: "Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."

12. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
13. Va. Code § 62.1-44.15(a) states that a VPDES permit is a “certificate” under the statute.
14. The Department has issued no VPDES permits or certificates to B & V Exhaust.
15. Grindall Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
16. Based on the inspection, results of the field tests provided by EPA, meetings and discussions with B & V Exhaust, the Board concludes that B & V Exhaust has violated Va. Code §62.1-44.5 and 9 VAC 25-31-50, by discharging a sodium hydroxide solution containing grease and oil from the Facility to state waters, without a permit, as described in paragraphs C(2) and C(4) through C(6) above.
15. Corrective actions taken by B & V Exhaust demonstrate that the violations described in paragraphs C(2) and C(4) through C(6) above, have been addressed, and B & V Exhaust is in compliance with State Water Control Law.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders B & V Exhaust, and B & V Exhaust agrees to:

1. Pay a civil charge of **\$1,965** in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
December 10, 2013	\$164 or balance
January 10, 2014	\$164 or balance
February 10, 2014	\$164 or balance
March 10, 2014	\$164 or balance
April 10, 2014	\$164 or balance
May 10, 2014	\$164 or balance
June 10, 2014	\$164 or balance
July 10, 2014	\$164 or balance
August 10, 2014	\$164 or balance
September 10, 2014	\$161 or balance
October 10, 2014	\$161 or balance
November 10, 2014	\$161 or balance

2. 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 Mr. Bennie Hicks d/b/a B & V Exhaust Systems, Inc. Within 15 days of receipt of such letter, Mr. Bennie Hicks d/b/a B & V Exhaust Systems, Inc. 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.

All payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

B & V Exhaust 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of B & V Exhaust for good cause shown by B & V Exhaust, 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, B & V Exhaust admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. B & V Exhaust consents to venue in the Circuit Court of Richmond for any civil action taken to enforce the terms of this Order.
5. B & V Exhaust declares it has received fair and due process under the Administrative Process Act and the State Water Control Law 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 B & V Exhaust 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. B & V Exhaust 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. B & V Exhaust shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. B & V Exhaust 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 B & V Exhaust 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.

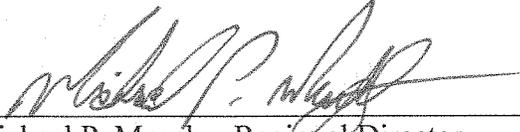
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and B & V Exhaust. Nevertheless, B & V Exhaust agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:
- The Director or his designee terminates the Order after B & V Exhaust has completed all of the requirements of the Order;
 - B & V Exhaust 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
 - the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to B & V Exhaust.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve B & V Exhaust 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 B & V Exhaust 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 B & V Exhaust 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 B & V Exhaust to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of B & V Exhaust.
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, B & V Exhaust Systems Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 10th day of November, 2013.



Michael P. Murphy, Regional Director
Department of Environmental Quality

Consent Order
B & V Exhaust
Page 9 of 9

B & V Exhaust Systems Inc. voluntarily agrees to the issuance of this Order.

Date: 8-20-13 By: Bennie Hicks PRESIDENT
(Person) (Title)

Commonwealth of Virginia

The City/County of Henrico

The foregoing document was signed and acknowledged before me this 20th day of

August, 2013, by Bennie Hicks who is

President of B & V Exhausts Systems Inc. on behalf of the corporation.



Notary Public
7327679

Registration No.

My commission expires: June 30, 2014

Notary seal:

JAVIE WILLIAMS
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES JUNE 30, 2014
COMMISSION # 7327679