



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN VIRGINIA REGIONAL OFFICE  
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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

~~Jeffery A. Steers~~  
Regional Director

## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

**BERGMANN'S CLEANING, INC.**  
Registration No. 73568

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1307.D, 10.1-1309 and 10.1-1316.C between the State Air Pollution Control Board (SAPCB) and Bergmann's Cleaning, Inc. for the purpose of resolving certain violations of the Air Pollution Control Law and/or regulations as specified in Section C of this Order.

### **SECTION B: Definitions**

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

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.

6. "Bergmann's" means Bergmann's Cleaning, Inc..
7. "Facility" means the Bergmann's Cleaning, Inc. facility located in Loudon County, Virginia.
8. "NRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Bergmann's owns and operates a dry cleaning facility in Loudon County that includes three petroleum solvent dry cleaning machines each with a rated capacity of 90 lbs/hour. The facility is subject to Virginia Air Pollution Control Laws and Regulations.
2. On December 8, 2006, DEQ staff conducted an inspection of another facility owned by Bergmann's located in Fairfax, Virginia. During the inspection, Jeffery Bergmann verbally advised DEQ staff about the Loudon County facility that had yet to be opened. DEQ had not received any written notification regarding the facility prior to this date. DEQ staff advised Bergmann's via e-mail dated December 8, 2006 that Bergmann's would be required to obtain an Air Permit for the facility prior to commencing operations.
3. Bergmann's submitted an application on January 3, 2007, to construct and operate a laundry facility with three petroleum solvent dry cleaning machines. Supplemental information was provided by Bergmann's on January 26, 2007, and March 7, 2007, and DEQ issued the Permit on May 4, 2007.
4. On March 9, 2007, DEQ received written notification from Bergmann's of the construction and start-up of petroleum solvent dry cleaning machines at the facility. The notification provided the date of construction as December 1, 2006 and the date of start-up as December 15, 2006.
5. DEQ issued a Notice of Violation on May 11, 2007, citing the following alleged violations:
  - *9 VAC 5-50-390.1 – Failure to obtain a permit prior to constructing a facility*
  - *9 VAC 5-50-390.6 – Failure to obtain a permit prior to commencing operations at the facility.*
  - *9 VAC 5-50-50(A).1 – Failure to provide written notification of the date of commencement of construction of a new source no later than 30 days after such date.*

- *9 VAC 5-50-50(A).2 – Failure to provide written notification of the anticipated date of initial startup of a new source not more than 60 days nor less than 30 days prior to such date.*
  - *9 VAC 5-50-50(A).3 – Failure to provide written notification of the actual date of startup of a new source within 15 days after such date.*
6. Bergmann's responded to the NOV in a letter dated May 22, 2007. Bergmann's asserted that it properly notified DEQ of construction the new site on December 8, 2006, and of start-up on January 3, 2007, via letter submitted to Terry Darton, Air Permitting Manager along with the Air Permit application.
  7. DEQ staff met with Bergmann's on May 30, 2007. Bergmann's advised that it did not learn that it needed a Permit until it was advised of such by DEQ on December 8, 2006. Additionally, Bergmann's made a business decision to operate without a Permit in order to minimize profits lost during that time period.

#### **SECTION D: Agreement and Order**

By virtue of the authority granted it in Va. Code §§10.1-1307.D, 10.1-1309 and 10.1-1316.C, the Board orders Bergmann's Cleaning, Inc., and Bergmann's Cleaning, Inc. voluntarily agrees, to pay a civil charge of \$15,000.00 in settlement of the violations cited in this Order in three monthly installments. The payments will be made according to the following schedule:

- 1<sup>st</sup> payment of \$5,000 will be paid on or before November 30, 2007;
- 2<sup>nd</sup> payment of \$5,000 will be paid on or before December 31, 2007; and
- 3<sup>rd</sup> payment of \$5,000 will be paid on or before January 31, 2008;

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

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

Either on a transmittal letter or as a notation on the check, Bergmann's Cleaning, Inc. shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for Bergmann's Cleaning, Inc..

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Bergmann's Cleaning, Inc., for good cause shown by Bergmann's Cleaning, Inc., or on its own motion after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Bergmann's Cleaning, Inc. on May 11, 2007. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities, whether or not arising out of the same or similar facts, for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Bergmann's Cleaning, Inc. admits the jurisdictional allegations but neither admits nor denies the factual findings, and conclusions of law contained herein.
4. Bergmann's Cleaning, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Bergmann's Cleaning, Inc. declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution 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 Bergmann's Cleaning, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar 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. Bergmann's Cleaning, Inc. 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 other such circumstance. Bergmann's Cleaning, Inc. must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Bergmann's Cleaning, Inc. shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this 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 Director of the Regional Office in writing within 24 hours of learning of any condition above, which Bergmann's Cleaning, Inc. intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. Any plans, reports, schedules or specifications attached hereto or submitted by Bergmann's Cleaning, Inc. 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.
10. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and Bergmann's Cleaning, Inc..
12. This Order shall continue in effect until:
  - a. Bergmann's Cleaning, Inc. 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
  - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Bergmann's Cleaning, Inc..

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Bergmann's Cleaning, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. By its signature below, Bergmann's Cleaning, Inc. voluntarily agrees to the issuance of this Order.
14. The undersigned representative of Bergmann's Cleaning, Inc. 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 Bergmann's Cleaning, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Bergmann's Cleaning, Inc..

And it is so ORDERED this 6 day of November, 2007.



Thomas A. Faha, NRO Regional Director  
Department of Environmental Quality

Bergmann's Cleaning, Inc. voluntarily agrees to the issuance of this Order.

By: E. Peter Bergmann

Title: President

Date: 10-29-2007

~~Commonwealth of Virginia~~ state of Maryland  
City/County of Montgomery

The foregoing document was signed and acknowledged before me this 29 day of October, 2007, by E. Peter Bergmann, who is  
(name)

President of Bergmann's Cleaning, Inc., on behalf of the Corporation.  
(title)

  
Notary Public

My commission expires: 5/1/10