



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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www.deq.virginia.gov

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## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO DYNAX AMERICA CORPORATION Registration No. 21279

### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Dynax America Corporation, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, the applicable permits and regulations.

### SECTION B: Definitions

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

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
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, as described in Va. Code § 10.1-1185.
5. "Dynax" means Dynax America Corporation licensed to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Dynax is a "person" within the meaning of Va. Code § 10.1-1300.
6. "Facility" means the Dynax America Corporation facility located at 568 East Park Drive, Botetourt County, Virginia.

7. "Notice of Violation" or "NOV" means a type of Notice of Violation under Va. Code § 10.1-1309.
8. "NSR Permit" means the Stationary Source Permit to modify and operate an automotive parts manufacturing facility issued under the Virginia Air Pollution Control Law and the Regulations to Dynax on June 10, 2009.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 through 80.
11. "Title V Permit" means the Title V Federal Operating Permit issued to Dynax on November 1, 2003 as modified on October 19, 2007.
12. "Va. Code" means the Code of Virginia (1950), as amended. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

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

1. Dynax owns and operates the Facility in Botetourt, Virginia. The Facility manufactures automotive parts. The Facility is the subject of the Title V Permit and NSR Permit which grant authorization to operate a Stationary Source of Air Pollution.
2. The Facility is subject to Maximum Available Control Technology ("MACT") standards 40 CFR Part 63 Subpart Mmmm: National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products, and 40 CFR Part 63 Subpart JJJJ: National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.
3. 40 CFR Part 63, Section 63.3881(e) of Subpart Mmmm allows the Facility the option to comply with the emission limitation representing the predominant coating activity of the Facility. On March 27, 2007, Dynax submitted information to the DEQ that demonstrated that Subpart JJJJ is the predominant coating activity at the Facility. In addition, Dynax stated that the Facility planned to demonstrate compliance with Subpart JJJJ as the compliance methodology for Subpart Mmmm.
4. On March 16, 2011, DEQ staff conducted a Partial Compliance Evaluation of the Subpart JJJJ / Mmmm Semi-annual Compliance Report for the period of July 1, 2010 through December 31, 2010 for compliance with the requirements of the Virginia Air Pollution Control Law, the Permits, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:

- a) The report indicated Adhesive Line #1 operated 3,897 hours and that the Continuous Parameter Monitoring System (CPMS) for Adhesive Line #1 did not capture valid static pressure monitoring data for 1,239 hours.
  - b) Based on the hours the Facility reported, only 68% of valid data for the semi-annual period was captured.
5. 40 CFR 63.3350(e) states in part:
    - (1) Each CPMS must complete minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation to have a valid hour of data.
    - (2) You must have valid data from at least 90 percent of the hours during which the process operated.
  6. Condition III A.14. of the Title V Permit states in part, "Requirements by Reference - Except where this permit is more restrictive than the applicable requirement, Saturation Line # 2 (SAT2) shall be operated in compliance with the requirements of 40 CFR Part 63, Subparts JJJJ and the adhesive lines (ADH1 & ADH2) and the portion of adhesive line solvent cleaning and thinning (ADSOLV) servicing those lines shall be operated in compliance with the requirements of 40 CFR Part 63, Subparts MMMM (9 VAC 5-80-110, 9 VAC 5-60-90, 9 VAC 5-60-100, and Condition 12 of the 6/20/07 NSR Permit)".
  7. Condition III A.15. of the Title V Permit states in part, "MACT Compliance Methodology – The permittee has elected to use the option of compliance with an alternate MACT requirement, where the predominant activity involving coating at the facility is subject to the alternate MACT, for demonstration of compliance with MACT MMMM. All equipment designated as subject to MACT MMMM will hereafter comply with the requirements of MACT JJJJ (9 VAC 5-80-110, 9 VAC 5-60-90, 9 VAC 5-60-100, and Condition 13 of the 6/20/07 NSR Permit)".
  8. Condition 10. of the NSR Permit states "Requirements by Reference - Except where this permit is more restrictive than the applicable requirement, the MACT equipment as described in Condition 1 shall be operated in compliance with the requirements of 40 CFR Part 63, Subparts MMMM and/or JJJJ, as applicable. (9 VAC 5-80-1180, 9 VAC 5-60-90 and 9 VAC 5-60-1000).
  9. On April 19, 2011, based on the evaluation, the Department issued a Notice of Violation to the Dynax, for the violation described in paragraphs C(5) through C(8) above.
  10. On May 17, 2011, Department staff met with representatives of Dynax to discuss the violation.
  11. Based on the results of the March 16, 2011 evaluation and the May 17, 2011 meeting, the Board concludes that Dynax has violated; 40 CFR 63.3350(e), Condition 10 of the NSR Permit and Condition III A.14 and 15 of the Title V Permit as described in paragraphs C(5) through C(8) above.
  12. In order for the Dynax to return to compliance, DEQ staff and representatives of Dynax have agreed to the Schedule of Compliance which is incorporated as Appendix A of this Order.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Dynax, and Dynax agree to:

1. Perform the actions described in Appendix A of this Order, and
2. Dynax will pay a civil charge of \$14,040 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment 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

Dynax 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 the Order with the consent of Dynax for good cause shown by Dynax, 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, Dynax admits the jurisdictional allegations, and agrees not to contest, but neither admit nor deny the findings of fact and conclusion of law in this Order.
4. Dynax 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. Dynax declares it has received fair and due process under the Administrative Process Act and the Virginia 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 Dynax 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. Dynax does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.
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. Dynax 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 occurrence. Dynax shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Dynax 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.

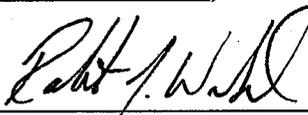
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Dynax intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
9. This Order is binding on Dynax hereto, its 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 Dynax. Nevertheless, Dynax agree to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. Dynax 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 Dynax.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Dynax from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. Any plans, reports, schedules or specifications attached hereto or submitted by Dynax 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.
14. The undersigned representatives of Dynax certify 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 Dynax to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Dynax.
15. 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.
16. By its signature below, Dynax voluntarily agree to the issuance of this Order.

And it is so ORDERED this 17<sup>th</sup> day of June 2011.



Robert J. Weld, Regional Director  
Department of Environmental Quality

Dynax America Corporation, voluntarily agrees to the issuance of this Order.

Date: 6/17/11 By: K. Fukumura  
Kagenori Fukumura  
President  
Dynax America Corporation

Commonwealth of Virginia  
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 17<sup>th</sup> day of  
June, 2011, by Kagenori Fukumura who is President of the Dynax America Corporation  
Botetourt County, Virginia Plant.

Sandra B. Moore  
Notary Public



Notary Seal  
My commission expires: August 31, 2012

**APPENDIX A**  
**SCHEDULE OF COMPLIANCE**

**1. Dynax shall:**

Submit a revised Capture System Monitoring Plan to the Department within 45 days of the effective date of this Order. The monitoring plan shall:

- a) describe the frequency of QA procedures for electronic data collection and review, and .
- b) include the operating parameter value or range of values for the static pressure devices. The facility shall include the basis for the value or range of values.

**2. Certification of Documents and Reports:**

In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, Dynax, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

**3. DEQ Contact:**

Unless other specified in this Order, Dynax shall submit all requirements of Appendix A of this Order to:

Timothy Overstreet  
Air Inspector Senior  
VA DEQ Blue Ridge Regional Office  
3019 Peters Creek Road, Roanoke, VA 24019  
(540) 562-6818  
timothy.overstreet@deq.virginia.gov