



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE

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David K. Paylor
Director

Amy Thatcher Owens
Regional Director

Molly Joseph Ward
Secretary of Natural Resources

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO FREDERICK COUNTY CUSTOMS, LLC Registration No. 81696

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 Frederick County Customs, LLC (Frederick) for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Facility" means the miscellaneous parts coating facility owned by Frederick County Customs, LLC, located at 441 Marple Road in Winchester, Virginia.

5. "Frederick" means Frederick County Customs, LLC, a limited liability corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Frederick County Customs, LLC is a "person" within the meaning of Va. Code § 10.1-1300.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "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.
8. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Permit" means a New Source Review (NSR) permit to construct and operate a miscellaneous parts coating facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Frederick County Customs, LLC on January 9, 2014.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "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.
14. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Frederick is the owner and operator of an auto body shop and miscellaneous parts coating facility, located at 441 Marple Road, Winchester, Virginia. The Facility is the subject of the Permit which allows for construction and operation of a miscellaneous parts coating facility.
2. On September 19, 2013, in response to a citizen complaint, DEQ staff performed a PCE at the Frederick Facility and observed that the Facility had constructed and operated a sand blasting booth, a paint booth, and a powder coating booth without a permit.
3. On October 21, 2013, DEQ staff received an Air Permit Application from Frederick.
4. On February 26, 2014, Department staff conducted a PCE of a startup notification letter from the Facility for compliance with the requirements of the Virginia Air Pollution

Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff observed that the Facility stated that start-up occurred in August of 2013.

5. 9 VAC 5-50-50.A states: “Any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board of the following:
 - a. The date of commencement of construction, reconstruction or modification of a new or modified source postmarked no later than 30 days after such date.
 - b. The anticipated date of initial startup of a new or modified source postmarked not more than 60 days nor less than 30 days prior to such date.
 - c. The actual date of initial startup of a new or modified source postmarked within 15 days after such date. “
6. 9 VAC 5-80-1120.A states: “No owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit.”
7. 9 VAC 5-80-1210.E states: “Any owner who constructs or operates a source subject to this section not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a source subject to this section who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.”
8. Condition 17 of the Permit states that “The permittee shall furnish written notification to the DEQ:
 - a. The actual date on which construction of the miscellaneous parts coating facility commenced within 30 days of the issuance of this permit.
 - b. The actual start-up date of the miscellaneous parts coating facility within 30 days of the issuance of this permit.”
9. On February 27, 2014, based on the September 19, 2013 inspection and February 26, 2014 PCE, DEQ issued a Notice of Violation, No. AVRO8871, to Frederick for the violations above.
10. On March 7, 2014, Department staff spoke with representatives of Frederick, to discuss the violations. Frederick believed that they were operating under the auto body exemption 9 VAC 5-80-1105B.5 & 6.
11. Based on the results the September 19, 2013, inspection, the permit application

submitted on October 21, 2013, and the March 7, 2014, phone conversation, the Board concludes that Frederick has violated Condition 17 of the Permit, 9 VAC 5-50-50.A, 9 VAC 5-80-1120.A, and 9 VAC 5-80-1210.E as described in paragraphs C2 through C10, above.

12. DEQ issued Frederick a minor NSR Permit for the Facility on January 9, 2014; therefore, the violations described in paragraphs C2 through C9, above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Frederick County Customs, LLC, and Frederick agrees to pay a civil charge of \$3804.00 within 30 days of the effective date of this 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

Frederick County Customs, LLC shall include its Federal Employer Identification Number (FEIN) 26-0748458 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Frederick shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Frederick for good cause shown by Frederick 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 and in NOV No. AVRO8871 dated February 27, 2014. 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, Frederick admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Frederick 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. Frederick 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 Frederick 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. Frederick 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. Frederick shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Frederick 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 the parties intend 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 and any 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 Frederick. Nevertheless, Frederick agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Frederick has completed all of the requirements of the Order;
 - b. Frederick 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
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Frederick.

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

RECEIVED
EQ - Valley
MAY 20 2014

And it is so ORDERED this 21st day of May, 2014.

To: _____
FILE: _____

Amy T. Owens

Amy T. Owens, Regional Director
Department of Environmental Quality

Frederick County Customs, LLC voluntarily agrees to the issuance of this Order.

Date: 5/19/2014 By: [Signature] [Signature]
Wayne Fauver Owner

Frederick County Customs, LLC

Commonwealth of Virginia
City/County of Frederick

The foregoing document was signed and acknowledged before me this 19th day of May, 2014, by Wayne Fauver who is Owner of Frederick County Customs, LLC on behalf of the corporation.

Kara Hinkle

Notary Public

7391949

Registration No.

My commission expires: July 31, 2017

Notary seal:

