DEQ VALLEY
NOV 18 2011
To:
Date:

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801
(540) 574-7800 Fax (540) 574-7878
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
KVK PRECISION SPECIALTIES, INC.
Registration No. 81672

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 KVK Precision Specialties, Inc., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the 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 KVK Precision Specialties, Inc., facility, located at 425 Quincy Avenue in Page County, Virginia.

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5. "KVK" means KVK Precision Specialties, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. KVK 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. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.

10. "SEP" means Supplemental Environmental Project under Va. Code § 10.1-1186.2.

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. KVK owns and operates the Facility in Page County, Virginia. The Facility operates a machine shop.

2. On June 2, 2011, DEQ staff, conducted a PCE and observed that painting operations at the Facility could be subject to air permitting requirements. Based on the evaluation Department staff requested that KVK submit a Form 7 Air Permit Application.

3. On July 1, 2011, DEQ staff received a Form 7 Air Permit application from KVK.

4. On July 19, 2011, DEQ staff conducted a PCE of the Facility record and permit application for compliance with the requirements of the Virginia Air Pollution Control Law and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations.

   a) KVK's painting operations at the Facility are subject to air permitting requirements.

5. 9 VAC 5-80-1120(A), states: "No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the

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board a permit to construct and operate or to modify and operate the source."

6. 9 VAC 5 80-1210(D) states: "Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article 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."

7. 9 VAC 5-50-50 (A) requires that, any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board for the date of commencement of construction, initial startup, and actual date of startup for a new or modified source.

8. On July 20, 2011, based on the evaluation and follow-up information, the Department issued Notice of Violation No. AVRO8076 to KVK for the violations described in paragraphs C(2) through C(6), above.

9. On July 22, 2011, KVK responded to the NOV by telephone. They stated that they were working with DEQ's permitting group to obtain the appropriate permit for the Facility.

10. On August 4, 2011, DEQ staff met with KVK personnel at the Facility to discuss the violations.

11. Based on the results of June 2, 2011 and July 19, 2011 evaluations, the August 4, 2011 meeting, and documentation submitted on July 1, 2011, the Board concludes that KVK has violated 9 VAC 5-80-1120(A), 9 VAC 5 80-1210(D) and 9 VAC 5-50-50 (A) as described in paragraphs C(5) and C(7), above.

12. In order for KVK to complete its return to compliance, DEQ staff and representatives of KVK have agreed to the Schedule of Compliance, which is incorporated as Appendix A and Appendix B of this Order.

SECTION D: Agreement and Order

By virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, and upon consideration of Va. Code § 10.1-1186.2, the Board orders KVK Precision Specialties, Inc., and KVK Precision Specialties, Inc. agrees to perform the actions described in Appendices A and B of this Order. In addition, the Board orders KVK Precision Specialties, Inc., and KVK Specialties, Inc. voluntarily agrees to a civil charge of $4,095.00 in settlement of the violations cited in this Order, to be paid as follows:

1. KVK Specialties Inc. shall pay a civil charge of $409.50 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

KVK Precision Specialties, Inc. 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).

2. KVK shall satisfy $3,685.50 of the civil charge by satisfactorily completing the SEP described in Appendix B of this Order.

3. The net project costs of the SEP to KVK shall not be less than the amount set forth in Paragraph D.2.b. If it is, KVK shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

4. By signing this Order KVK certifies that it has not commenced performance of the SEP.

5. KVK acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by KVK to a third party, shall not relieve KVK of its responsibility to complete the SEP as described in this Order.

6. In the event it publicizes the SEP or the SEP results, KVK shall state in a prominent manner that the project is part of a settlement of an enforcement action.

7. The Department has the sole discretion to:

    a. Authorize any alternate, equivalent SEP proposed by the Facility; and

    b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

8. Should the Department determine that KVK has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify KVK in

writing. Within 30 days of being notified, KVK shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of KVK for good cause shown by KVK, 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, KVK admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. KVK 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. KVK 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 KVK 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. KVK 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. KVK shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. KVK 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 KVK.

11. This Order shall continue in effect until:

a. The Director or his designee terminates the Order after KVK has completed all of the requirements of the Order;

b. KVK 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 KVK.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve KVK 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 KVK 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 KVK certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind KVK to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of KVK.

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, KVK voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21st day of November, 2011.

Amy Thatcher Owens, Regional Director
Department of Environmental Quality

----------(Remainder of Page Intentionally Blank)----------

KVK Precision Specialties, Inc. voluntarily agrees to the issuance of this Order.

Date: 11/9/2011 By: _____, President
Jeff Vaughan President
KVK Precision Specialties, Inc.

Commonwealth of Virginia
City/County of Page

The foregoing document was signed and acknowledged before me this 9th day of November, 2011, by Jeff Vaughan who is President of KVK Precision Specialties, Inc., on behalf of the corporation.

Patsy A. Miller
Notary Public

7060822
Registration No.

My commission expires: 11/30/14

Notary seal:

PATSY A. MILLER
Notary Public
Commonwealth of Virginia
7060822
My Commission Expires Nov 30, 2014

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Permit Required to Construct or Operate**

KVK shall not construct or operate a facility that requires a permit under 9 VAC 5-80-1120(A) without first obtaining such a permit.

a. Within 45 days of the execution of this Order, KVK shall submit to DEQ the information needed to complete the Air Permit Application (Form 7), to reflect the operational processes and associated equipment at the Facility. The Form 7 shall include language detailing operating parameters, production scenarios, Material Safety Data Sheets (MSDSs) and any other information related to air emissions at the Facility.

b. Within 90 days of the execution of this Order, KVK shall supply sufficient information as requested by DEQ for the Department to evaluate the application and issue a permit if required.

c. KVK shall keep records at the Facility sufficient to calculate monthly and annual emissions until a Permit is issued. Records shall also include fuel usage, production values, maintenance logs, and operator training.

d. If KVK is unable to provide any information requested by the Department it shall submit correspondence demonstrating reasonable progress is being made toward meeting the request within four business days of discovery.

e. Within 30 days of the execution of this Order, KVK shall submit all required notifications required under 9 VAC 5-50-50(A).

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, KVK, 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 otherwise specified in this Order, KVK shall submit all requirements of Appendix A of this Order to:

Karen Hensley
Enforcement Specialist
VA DEQ –Valley Regional Office
P.O. Box 3000
4411 Early Road
Harrisonburg, VA 22801
Phone: (540) 574-7821
Fax: (540) 574-7878
Email: karen.hensley@deq.virginia.gov

APPENDIX B
KVK Precision Specialties, Inc.
SUPPLEMENTAL ENVIRONMENTAL PROJECT

In accordance with Va. Code § 10.1-1186.2, KVK shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix. As used in this Order and Appendix, SEP means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1. The SEP to be performed by KVK is the installation and operation of a Donaldson Torit Model WSO-10 oil mist collector on a vertical turret lathe.

2. Within 45 days of the execution of this Order, KVK shall submit to DEQ the information needed to complete the Air Permit Application (Form 7) to include the Mist Collector as a control device on the vertical turret lathe.

3. The SEP shall be completed by March 15, 2012.

4. KVK shall submit progress reports on the SEP on a quarterly basis, due the 10th day of each quarter.

5. KVK shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. KVK shall submit the final report and certification to the Department by April 15, 2012.

6. If the SEP has not or cannot be completed as described in the Order, KVK shall notify DEQ in writing no later than March 1, 2012. Such notification shall include:
   a. an alternate SEP proposal, or
   b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.

7. KVK hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.

8. KVK shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment within **30** days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from KVK's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

9. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to the contact identified in Appendix A of this Order.