



DEQ-VALLEY

OCT 19 2011

TO: _____

FILE: _____

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
K.V.K. PRECISION SPECIALTIES, INC.
UNPERMITTED DISCHARGE**

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 K.V.K. Precision Specialties, Inc., regarding the Company's operations at its Shenandoah facility in Page County, for the purpose of resolving certain violations of the State Water Control Law and the Regulation.

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 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.
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. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.

5. "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.
6. "Facility" or "Plant" means the KVK manufacturing buildings which are located in Shenandoah, Page County Virginia.
7. "KVK" or "the Company" means K.V.K. 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 § 62.1-44.3.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "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.
10. "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.
11. "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.

12. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
14. "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.
15. "STP" means sewage treatment plant.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "VPDES" means the Virginia Pollutant Discharge Elimination System.
19. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: The Board Findings of Facts and Conclusions of Law

1. KVK is a company which specializes in precision metal machining and fabrication in the Town of Shenandoah, Virginia.
2. On May 17, 2011, DEQ received a pollution complaint reporting foam in storm water emanating from the area at or near KVK.
3. On May 17, 2011, DEQ staff investigated the pollution complaint and observed white foam in the roadside ditch in the area around 320 Quincy Avenue in the Town of Shenandoah. In this area the foam had backed up below a pipe running under a driveway. DEQ staff followed the ditch up to a point beside the road at the Facility where a hose was found discharging into the ditch. This hose was discharging a slight orange tinted wastewater and foam was noted at the discharge point. Staff noted that the hose came from the Facility.

DEQ staff requested and were granted permission to enter the Company's building to trace the source of the discharge. DEQ staff were shown two long, rectangular tanks, each with a capacity of approximately 4,000 gallons of liquid. KVK indicated that the hose was attached to the tank which was an acid wash for etching/degreasing steel. The second tank was identified by KVK staff as spent rinse water. Company staff indicated that a neutralizer was added to the acid wash prior to discharge to the ditch and included a detergent, which caused the foam.

During the investigation, DEQ staff told the Company that it could not continue discharging to the ditch until it obtained a discharge permit from DEQ.

After leaving the Plant, DEQ staff followed the discharge path which flowed in a roadside ditch approximately 1,260 feet down the SE side of Quincy Avenue. The discharge entered the storm sewer near Rt. 340 and flowed through a pipe approximately 800 feet to where it where it emerged on the east side of Rt. 340, about 100 feet north of an unnamed tributary to the South Fork of the Shenandoah River. Staff observed a massive amount of foam at the pipe's discharge point and running down the boulders leading down to the stream at a culvert under Rt. 340. DEQ staff also observed white foam along and on the surface of the stream immediately after the stream flowed through the culvert to the west side of Rt. 340.

4. On May 18, 2011, DEQ conducted a follow-up investigation to determine the nature of the liquids that were discharged to the unnamed tributary from the Plant. During discussions with Company personnel, DEQ was informed that the wash tank is used for cleaning steel prior to the processes of cutting, bending, and welding, etc. The Company indicated that it only works on ferrous steel and no exotic metals. DEQ requested information on the makeup and characterization of the wash-water and rinse-water used to clean the steel prior to processing. DEQ was informed that the wash and rinse wastewaters had not been analytically characterized. The Company indicated that the wash-water is 3 percent (by volume) of a product containing phosphoric acid (less than 5 percent). For washing purposes this mixture is heated to 150 degrees F. The Company personnel indicated that the wash-water is in the pH range of 4.0 to 4.5.
5. During the May 18, 2011, follow-up investigation, DEQ staff informed the Company that it would need to characterize the wash-water, the rinse-water and the sludge remaining in the tanks before it could be properly disposed. The Company told DEQ that the contents of the tanks were discharged to the ditch the previous evening. DEQ staff confirmed that the remainder of the wash-water and all of the rinse water had been released after DEQ's inspection the previous day.

The Company did not report the unpermitted discharge to DEQ within 24 hours as required by Va. Code and VAC regulation 9 VAC 25-31-50.

Later in discussions with the Company, the Company indicated that it discharged the industrial wastewaters because of apparent time limitations to arrange for the wastewaters to be pumped/hailed before beginning a new metal processing operation/job.

6. KVK presently only discharges sanitary wastewater to the Town of Shenandoah's STP for treatment.

7. Prior to the May 17, 2011 unpermitted discharge, KVK had disposed of its industrial wastewaters via a pump and haul contractor; previous to 2007, it discharged the wastewaters to the Town of Shenandoah collection system.
8. On May 25 2011, DEQ VRO issued Notice of Violation No. W2011-06-V-0001 to KVK for unpermitted discharges to State waters in May 2011.
9. On June 6, 2011, DEQ staff met with representatives of KVK to discuss the NOV's violations, the problems that led to the violations and corrective actions needed to address the problems. During those discussions, KVK represented that prior to the discharge of May 17, 2011, it utilized a contractor to pump and haul its industrial wastewater. The Company represented that the events of May 17, 2011, were an anomaly and were the result of poor decision making by staff.
10. By letter dated July 11, 2011, KVK provided a preliminary plan and schedule of corrective actions for inclusion in Appendix A of this Order.
11. Va. Code § 62.1-44.5 states that: “[E]xcept 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(5a) states that a VPDES permit is a “certificate” under the statute.
14. The Department has issued no permits or certificates to KVK.
15. The unnamed tributary to South Fork Shenandoah River is a surface waters located wholly within the Commonwealth and is a “state waters” under State Water Control Law.
16. Based on KVK's letter(s) to DEQ, the NOV, the June 6, 2011 meeting, the May 17th and 18th inspections and a file review, the Board concludes that KVK has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging wastewater to State waters without a permit or certificate issued by the Board, as described in Section C above.
17. In order for KVK to provide for compliance with the Regulation and Va. Code § 62.1-44.5, DEQ and representatives of KVK have agreed to the schedule of compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code § 62.1-44.15 and upon consideration of Va. Code § 10.1-1186.2, the Board orders KVK, and KVK agrees:

1. To perform the actions described in **Appendices A and B** of this Order; and
2. To a civil charge of **\$21,820** in settlement of the violations cited in this Order, to be paid as follows:
 - a. KVK shall pay **\$2,182** of the civil charge **within 30 days** of the effective date of this Order. 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

KVK shall include its Federal Employer Identification Number (FEIN) (**54-6001261**) 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).

- b. KVK shall satisfy **\$19,638** of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in **Appendix B** of this Order.
 - c. 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.
 - d. By signing this Order KVK certifies that it has not commenced performance of the SEP.

- e. 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.
- f. 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.
- g. The Department has the sole discretion to:
 - i. Authorize any alternate, equivalent SEP proposed by the Facility; and
 - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
- h. 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 described 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 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 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 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 KVK 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 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. Nevertheless, KVK 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 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 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 9th day of January, 2012

Amy T. Owens
Amy T. Owens, Regional Director
Department of Environmental Quality

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

Date: 10-19-2011 By: [Signature] President
(Person) (Title)
K.V.K. Precision Specialties, Inc.

Commonwealth of Virginia
City/County of Page

The foregoing document was signed and acknowledged before me this 19th day of October, 2011, by Jeffery P. Vaughan who is President of K.V.K. Precision Specialties, Inc. on behalf of K.V.K. Precision Specialties, Inc.

Timothy W. Bailey
Notary Public
158043
Registration No.

My commission expires: 2-28-13

Notary seal:



**APPENDIX A
SCHEDULE OF COMPLIANCE
KVK PRECISION SPECIALTIES, INC.**

1. KVK shall not discharge industrial wastewaters to State waters without authority of a permit or certificate issued by the DEQ.
2. KVK shall properly dispose of its industrial wastewaters by either using a contractor to pump and haul its industrial wastewater for proper disposal or through a sewage treatment plant holding a VPDES permit that will accept KVK's industrial wastewaters for treatment.
3. KVK shall provide to DEQ any additional information regarding its operations at the Facility necessary to determine its compliance with the Code **within 30 days** of receipt of written request.
4. No later than **14 days** following a completion date identified in the above schedule of compliance KVK shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.
5. **DEQ Contact**

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

Steve Hetrick
Enforcement Specialist Sr.
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7833 Phone
(540) 574-7878 Fax
Steven.hetrick@deq.virginia.gov

APPENDIX B
KVK PRECISION SPECIALTIES, INC.
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

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 construction of a pole barn to cover metal scrap, cardboard and other industrial materials to prevent exposure of those industrial materials to storm water as described in its letter dated October 12, 2011.
2. **By November 30, 2011**, KVK shall obtain any necessary building permits to construct the pole barn.
3. **By December 31, 2011**, KVK shall begin construction of the pole barn to cover the industrial materials.
4. **By January 31, 2012**, KVK shall complete the construction of the pole barn and ensure that the industrial materials stored within the pole barn are not exposed to storm water. At the same time KVK shall provide DEQ with a certification of no exposure as required by 9 VAC 25-31-120.E.
5. KVK shall submit progress reports on the SEP on a monthly basis, due the 10th day of each month.
6. 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. **By February 15, 2012**, KVK shall submit the final report and certification to the Department.
7. If the SEP has not or cannot be completed as described in the Order, KVK shall notify DEQ in writing **no later than February 15, 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.
8. 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.

9. **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, or similar documentation** 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.

10. 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.**