



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTH CENTRAL REGIONAL OFFICE

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April 14, 2008

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Thomas L. Henderson
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO KYANITE MINING CORP. REGISTRATION NUMBER 30677

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1300 *et seq.* and 10.1-1185, between the State Air Pollution Control Board and Kyanite Mining Corp., for the purpose of resolving certain alleged violations of Air Pollution Control Law and regulations. This alleged violation was addressed in a Notice of Violation ("NOV") dated March 13, 2008.

SECTION B: Definitions

Unless the context clearly 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 body of the Commonwealth of Virginia as described in Va. 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. "Kyanite Mining Corp." means that this is a facility that is located in Buckingham County and is certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the Kyanite Mining Corp. facility, located in Buckingham County, Virginia.

8. “Regulations” mean the “State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution,” which have been incorporated into Title 9 of the Virginia Administrative Code (“VAC”).
9. “SCRO” means the South Central Regional Office of DEQ, located in Lynchburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Kyanite Mining Corp. owns and operates a facility in Buckingham County, Virginia. This Facility currently operates pursuant to a Title V permit with an effective date of May 23, 2003, which was later amended on June 19, 2007.
2. A review of Facility files was conducted on February 27, 2008. Pursuant to the review, it was discovered that the required Title V testing had not been completed in a timely manner.
3. A Notice of Violation (“NOV”) was issued on March 13, 2008, citing the following alleged violations:
 - a. Failure to conduct stack tests by December 12, 2007, for PM, SO₂, NO_x, and CO from the East Ridge dryer/cooler's exhaust, using Reference Methods 5, 202, 6C, 7E, 9, and 10B, respectively or alternative test methods as approved by the SCRO, to determine compliance with the emission limits and control efficiency requirements contained in Conditions 1.b and 1.g of the Title V permit. The stack tests are to be performed in the fifth year of the permit. The stack tests are to be performed as required by 9 VAC 5-50-30, 5-80-110 E, and 5-80-110 K.
 - b. Failure to conduct stack tests by December 13, 2007, for PM, SO₂, NO_x, and CO from the Willis Mountain WESP exhaust, using Reference Methods 5, 202, 6C, 7E, 9, and 10B, respectively or alternative test methods as approved by the SCRO, to determine compliance with the emission limits and control efficiency requirements contained in Conditions 1.b and 1.g of the Title V permit. The stack tests are to be performed in the fifth year of the permit. The stack tests are to be performed as required by 9 VAC 5-50-30, 5-80-110 E, and 5-80-110 K.
4. DEQ staff met with Facility personnel on March 20, 2008, to discuss the NOV. A Facility representative informed the DEQ staff that the stack tests were scheduled to be performed on April 7, 2008, which has been amended to April 1 and 2, 2008.
5. In order to resolve these alleged violation, Kyanite Mining Corp. has agreed to pay a civil penalty, as required in Section D of this order, and to perform the tests, as required in Appendix A of this order.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 10.1-1307(D), 10.1-1309, 10.1-1184, 10.1-1316(C), and 10.1-1186.2, orders Kyanite Mining Corp., and Kyanite Mining Corp. voluntarily agrees, to perform the actions described in Appendix A of this Order.

In addition, the Board orders Kyanite Mining Corp., and Kyanite Mining Corp. voluntarily agrees to pay a civil charge in the amount of **\$6,572.00**. The civil charge is due within 30 days of the effective date of the Order in settlement of the alleged violations cited in this Order. Payment shall be made by check, certified check, money order, or cashier check payable to the “Treasurer of Virginia,” delivered to:

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

Kyanite Mining Corp. shall include its Federal Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this paragraph.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Kyanite Mining Corp., for good cause shown by Kyanite Mining Corp., or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Kyanite Mining Corp. by DEQ on March 13, 2008. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Kyanite Mining Corp. admits the jurisdictional allegations, but does not admit factual findings, and conclusions of law contained herein.
4. Kyanite Mining Corp. 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. Kyanite Mining Corp. declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State 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 enforce this Order.
6. Failure by Kyanite Mining Corp. 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. Kyanite Mining Corp. 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. Kyanite Mining Corp. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kyanite Mining Corp. 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 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 in writing within 24 hours 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 of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their 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 Kyanite Mining Corp.. Notwithstanding the foregoing, Kyanite Mining Corp. agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Kyanite Mining Corp. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Kyanite Mining Corp., from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below Kyanite Mining Corp. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of May 1st, 2008.

for [Signature]
Regional Director
Department of Environmental Quality

Kyanite Mining Corp. voluntarily agrees to the issuance of this Order.

By: [Signature]
Date: April 25th 2008

Commonwealth of Virginia, City/County of BUCKINGHAM

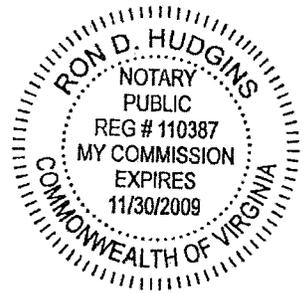
The foregoing document was signed and acknowledged before me this 28th day of

April, 2008, by Guy Dixon, who is
(name)

President of Kyanite Mining Corp. on behalf of the Corporation.
(title)

[Signature]
Notary Public

My commission expires: November 30, 2009



APPENDIX A

In order to comply with the provisions of the State Air Pollution Control Law and Regulations, the Board orders Kyanite Mining Corp. to undertake, and Kyanite Mining Corp. agrees to implement, the following terms and conditions of this Appendix:

1. Kyanite Mining Corp. shall submit the stack test results by June 1, 2008 for East Ridge.
2. Kyanite Mining Corp. shall submit the stack test results by June 2, 2008 for Willis Mountain.