



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTH CENTRAL REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Steven A. Dietrich  
Regional Director

## STATE WATER CONTROL BOARD ENFORCEMENT ACTION

### SPECIAL ORDER BY CONSENT

#### ISSUED TO

#### MOTION CONTROL INDUSTRIES, INC. SOUTH HILL FACILITY

#### VPDES SW INDUSTRIAL PERMIT REGISTRATION NO. VAR051536

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §10.1-1185, and §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Motion Control Industries, Inc. ("Motion Control") for the purpose of resolving certain violations of environmental law and regulations.

#### **SECTION B: Definitions**

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

1. "Board" means the State Water Control Board, a permanent citizen 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.
4. “Facility” means the industrial manufacturing plant located in South Hill, Virginia, which Motion Control owns, operates, and controls.
5. “Order” means this document, also known as a Special Order by Consent.
6. “Permit” means an authorization, certificate, license, or equivalent control document issued by the Board to implement the requirements of the VPDES Permit Regulation, and includes VPDES Permit No. VAR05, the VPDES General Permit for Discharges of Stormwater Associated with Industrial Activity.
7. “Permittee” or “Motion Control” means Motion Control Industries, Inc., a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
8. “SCRO” means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
9. “SWPPP” or “SWP3” means a Stormwater Pollution Prevention Plan. A SWPPP must be prepared and implemented prior to submitting a request for coverage under the General Permit for Stormwater Discharges Associated with Industrial Activity (*See 9 Virginia Administrative Code 25-151-80 A.2.*).
10. “Stormwater Discharge Associated with Industrial Activity” means the discharge from any conveyance which is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw material storage areas at an industrial plant (*See 9 Virginia Administrative Code 25-151-10*).
11. “VAC” means the Virginia Administrative Code.
12. “VPDES” means the Virginia Pollutant Discharge Elimination System.
13. “Va. Code” means the Code of Virginia (1950), as amended.

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

1. Motion Control manufactures heavy duty brake components at the South Hill Facility. Motion Control has been operating under coverage of VPDES Industrial Stormwater General Permit Registration Number VAR051536, with coverage obtained on March 14, 2005.
2. A site inspection conducted on January 8, 2008 by SCRO staff, and an associated records review, revealed the following:
  - Department staff noted that Motion Control failed to properly document quarterly visual examinations by failing to utilize the monitoring form required under the SWP3.
  - Department staff noted that Motion Control failed to perform and document the Annual Comprehensive Site Compliance Evaluation for 2007.
  - Department staff noted that Motion Control failed to address good housekeeping and Best Management Practices (BMPs) by failing to keep particulate matter and petroleum products out of the Facility's stormwater conveyances.
  - Department staff also detailed the appearance of petroleum product in the stormwater conveyances, with a visible oil "sheen" on the receiving stream below outfall #001. The petroleum product meets the definition of oil as defined in item 12 below.
  - Department staff noted that Motion Control failed to record the release of a petroleum product to the stormwater conveyances.
  - Department staff observed the Facility's hydraulic units leaking during the inspection.
  - The Facility failure to identify and conspicuously mark each outfall with appropriate signage.

3. Part I. (A.)(1.) (a.) of the subject Permit requires the Permittee to perform quarterly visual examinations of stormwater discharges associated with industrial activity from each outfall.
4. Part I. (A.) (3) of the subject Permit requires the Permittee to document the observations made during each of the required quarterly visual monitoring events according to the format specified in the Facility's SWP3.
5. Part I. (B.)(7.) of the subject Permit requires the Permittee to select, install, implement and maintain Best Management Practices (BMPs) at the Facility that minimize pollutants in the storm water discharges as necessary to meet applicable water quality standards.
6. Part II.(G.) of the subject Permit requires any Permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious substance into or upon state waters shall notify the Department of the discharge immediately upon discovery , but in no case later than 24 hours after said discovery.
7. Part III. (B.)(6.) of the subject Permit requires both structural and non-structural BMPs for control of stormwater discharges at the Facility (i.e., containment structures for storage tanks and process units, as well as conspicuously identifying stormwater outfalls), including the clean-up of spills of particulate matter and petroleum discharges prior to those materials reaching the Facility's stormwater conveyance system.
8. Part III.(C.) of the subject Permit requires the Permittee to maintain all BMPs identified in the SWP3 in effective operating condition.
9. Part III.(E.) of the subject Permit requires the Permittee to conduct comprehensive site compliance evaluations at least once per year. Part III.(E.)(2.) requires that the SWP3 be modified as necessary, based on the results of the evaluation, within two weeks following the inspection. Part III. (E.)(3.) requires the preparation of a compliance evaluation report summarizing the results of the evaluation and modifications made to the SWP3.

10. Va. Code § 62.1 – 44.3 defines state waters as “all water, on the surface or under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.”
11. Va. Code § 62.1 – 44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth.
12. Va. Code § 62.1 – 4.34:10 defines oil as “oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.”
13. In no part does the Permit allow the discharge of petroleum products to State waters from the Facility.
14. The Department issued Notice of Violation No. W2008-01-L-0008 on February 11, 2008, to Motion Control to address the above referenced violations of State Water Control Law and Permit requirements.
15. On February 29, 2008, Department staff and Motion Control met to discuss the Notice of Violation, corrective action initiated by Motion Control since the inspection, and the proposed formal enforcement action.

**SECTION D: Agreement and Order**

By virtue of the authority granted it pursuant to Va. Code § 62.1-44.15(8a) and (8d), the State Water Control Board orders Motion Control, and Motion Control consents, to perform the actions contained in Appendix A of this Order. Further, the Board orders Motion Control, and Motion Control consents, to pay a civil charge of **\$26,140** within 30 days of the issuance of this Order in settlement of the violations cited herein. Payment shall be made by check or money order payable to the “Treasurer of Virginia”, and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, VA 23218

The payment shall include Motion Control's Federal Identification Number and shall identify that payment is being made pursuant to this Order.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Motion Control, for good cause shown by Motion Control, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically cited herein. 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 terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, local, or regulatory authorities, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Motion Control admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Motion Control declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to 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.
5. Failure by Motion Control to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. 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. Nothing herein shall

affect appropriate enforcement action by any other federal, state, or local regulatory authority.

6. 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. Nothing herein shall waive the initiation of appropriate enforcement action or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.
7. Motion Control 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 other such occurrence. Motion Control shall demonstrate that such circumstances resulting in noncompliance were beyond the control of Motion Control and not due to a lack of good faith or diligence. Motion Control 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 notify the Regional Director verbally within 24 hours and in writing within five (5) days of learning of any condition listed above, which Motion Control 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.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns jointly and severally.
9. Any plans, reports, schedules, or specifications attached hereto or submitted by Motion Control and approved by the Department pursuant to this Order are

incorporated into this Order. Any noncompliance with such approved documents shall be considered a violation of this Order.

10. This Order shall become effective upon execution by the Director, or his designee, and Motion Control.
11. This Order shall continue in effect until the Director, his designee, or the Board terminates this Order in his or its sole discretion upon 30 days written notice to Motion Control. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Motion Control from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. The undersigned representative of Motion Control 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 Motion Control to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Motion Control.
13. By its signature below, Motion Control Industries, Inc. consents to the issuance of this Order.

(The remainder of this page is intentionally left blank)

And it is so ORDERED this 10<sup>th</sup> day of DECEMBER, 2008.

Steven A. Dietrich

Steven A. Dietrich, P.E.  
Regional Director  
South Central Regional Office  
Department of Environmental Quality

Motion Control Industries, Inc. consents to the issuance of this Order.

Date: 10/10/08 By: Paul Gottlieb  
Paul Gottlieb, Plant Manager  
South Hill, Virginia Facility  
Motion Control Industries, Inc.

Commonwealth of Virginia  
City/County of Spotsylvania

The foregoing document was signed and acknowledged before me this 10<sup>th</sup> day  
of October, 2008, by PAUL GOTTLIEB of  
Motion Control Industries, Inc., on behalf of Motion Control Industries, Inc.

Mark L. McCoy  
Notary Public

My commission expires: 11-30-2010.



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## **APPENDIX A SCHEDULE OF COMPLIANCE**

**Motion Control shall:**

1. Submit to the Department, within **90 days** of the effective date of this Order, a Site Characterization Report (SCR) in order for the Department to determine the nature and extent of the environmental impacts associated with the petroleum release to the stormwater conveyances and the receiving stream. The SCR shall contain a site and risk assessment conducted in accordance with the requirements of 9 VAC 25-580-260 to provide comprehensive data to allow the Department to determine if further corrective action is required.
2. Submit to the Department, within **120 days** of the effective date of this Order, an updated Stormwater Pollution Prevention Plan (SWP3) for review and approval that accurately reflects the present conditions at the Facility. The Plan should reflect the findings of the Annual Comprehensive Site Compliance Evaluation conducted on February 19, 2008, and the results of the SCR described in Item 1 above. Once approved, the updated SWP3 and all plans incorporated by reference into the SWP3 shall become an enforceable part of this Order.
3. Perform any additional remediation which the Department deems necessary after review of the risk assessment contained in the SCR within **180 days** of notification of such determination by the Department.
4. Submit to the Department for review and approval any subsequent revisions to the approved SWP3. Upon approval, the revised SWP3 shall be an enforceable part of this Order.
5. Submit to the Department for review and comment, all quarterly monitoring and visual inspection results, as well as the Annual Comprehensive Site Compliance Evaluation, as required by the subject Permit **for one year** from the effective date of this Order. Quarterly reports are to be submitted by the 10<sup>th</sup> of the month following the end of a calendar quarter. The Annual Evaluation is to be submitted to the Department upon completion by the Facility.
6. Maintain consistent compliance with all terms, conditions, and requirements of VPDES General Stormwater Registration Number VAR051536.
7. Submit all documentation required by this Order to:

G. Marvin Booth, III  
DEQ – South Central Regional Office  
7705 Timberlake Rd.  
Lynchburg, VA 24502