

10-10-07



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

L. Preston Bryant, Jr  
Secretary of Natural Resources

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David K. Paylor  
Director

Steven A. Dietrich  
Regional Director

## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO NanoChemonics Holdings, LLC Registration No. 20322

### SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and NanoChemonics Holdings, LLC for the purpose of resolving an alleged violation of the Title V Permit dated August 7, 2007.

### 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 collegial body of the Commonwealth of Virginia as described in 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. "NanoChemonics" means "NanoChemonics Holdings, LLC" the corporation certified to do business in Virginia.
7. "Facility" means the "NanoChemonics Holdings, LLC", located in Pulaski, Virginia.

8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means the "Title V Air Permit" (reissued, effective August 7, 2007).
10. "O&M" means operations and maintenance.

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

1. NanoChemonics has a Title V Air Permit, (reissued, effective August 7, 2007). Condition XI C.3, of the Title V Air Permit, requires that NanoChemonics submit their Semi-annual Monitoring Report by March 1<sup>st</sup> and September 1<sup>st</sup> following each corresponding period.
2. On September 13, 2006, NanoChemonics received a Warning Letter for a late submittal of their Semi-annual Monitoring Report.
3. On September 9, 2007, WCRO received a Semi-annual Monitoring Report from NanoChemonics. The report was dated September 4, 2007.
4. A Notice of Violation dated September 13, 2007, was issued to NanoChemonics for late submittal of their Semi-Annual Monitoring and Annual Title V Compliance reports.

### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1307.D, 10.1-1184 and §10.1-1316.C, orders NanoChemonics, and NanoChemonics agrees, to pay the civil charge listed in 1 below.

1. Pay a civil charge of \$650.<sup>00</sup> within 30 days after execution of this order by DEQ. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

2. The DEQ agrees that the civil charge assessed in Section D.1 hereof, is in settlement of the violations alleged in Section C.1 and Section C.2 hereof.

### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of NanoChemonics, for good cause shown by NanoChemonics, or pursuant to the Administrative Procedure Act after notice and opportunity to be heard.
2. This Order only addresses those conditions specifically identified 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 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, NanoChemonics admits the jurisdictional allegations, and will not contest DEQ's jurisdiction. NanoChemonics neither admits nor denies the factual findings, and conclusions of law contained herein.
4. NanoChemonics 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. NanoChemonics declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 et seq., and the Air Pollution Control Law with respect to any issue of fact or laws alleged herein 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 with respect thereto. 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 NanoChemonics 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, legally authorized 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. NanoChemonics shall be responsible for failure to comply with any of the terms and conditions of this Order unless its failure to comply was caused by earthquake, flood, other acts of God, war, strike, or such other occurrence. NanoChemonics shall show that such circumstances were beyond its reasonable control and not due to a lack of good faith or diligence on its part. NanoChemonics 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 within 24 hours of learning of any condition above, which the parties intend to assert will result in its failure to comply, 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, 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 NanoChemonics.
11. This Order shall continue in effect until certification of the payment of the civil charge has been made or the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to NanoChemonics. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NanoChemonics 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, NanoChemonics voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of OCTOBER 15, 2007.

Steven A. Dietrich  
Steven A. Dietrich, Regional Director,  
West Central Regional Office  
Department of Environmental Quality

NanoChemonics voluntarily agrees to the issuance of this Order.

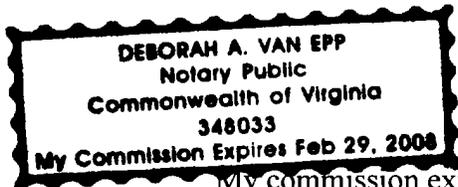
By: Carmine DiNitto  
Carmine DiNitto  
Executive Vice President

Date: 10/10/07

Commonwealth of Virginia  
County of Fulaski

The foregoing document was signed and acknowledged before me this 10 day of  
October, 2007, by Carmine DiNitto, who is  
Carmine DiNitto

Executive Vice President for NanoChemonics Holdings, LLC, on behalf of the Corporation.



Deborah A. Van Epp  
Notary Public

My commission expires: February 2008