



# *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*

TIDEWATER REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

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Director

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Regional Director

## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT**

### **ISSUED TO**

**Commander, Navy Region, Mid-Atlantic**

**Naval Station Norfolk Registration Number 60941  
Norfolk Naval Shipyard Registration Number 60326**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §10.1-1307, §10.1-1316, and §10.1-1319 between the State Air Pollution Control Board and the Commander, Navy Region, Mid-Atlantic, 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 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 Va. Code §§ 10.1-1301 and 10.1-1184.
3. "CNRMA" means Commander, Navy Region, Mid-Atlantic.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality.

6. “NSN” means the US Navy – Naval Station Norfolk, registration number 60941, with the listed address of 1530 Gilbert Street, Norfolk, VA 23511.
7. “NNSY” means US Navy - Norfolk Naval Shipyard, registration number 60326, with the listed address of 2601 Effingham Street, Portsmouth, VA 23709.
8. “Order” means this document, also known as a Consent Order.
9. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
10. “VOC” means Volatile Organic Compound, a known air pollutant.
11. "Regulations" means Virginia Regulations for the Control and Abatement of Air Pollution (9 VAC 5-60-10 *et seq.*).
12. “CFR” means the Code of Federal Regulations.

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

1. The Commander, Navy Region, Mid Atlantic, has authority over the federal facilities Naval Station Norfolk, located in the vicinity of the intersection of Hampton Blvd and I-564 with the listed address 1530 Gilbert St, Norfolk, VA 23511, and Norfolk Naval Shipyard, with the listed address 2601 Effingham Street, Portsmouth, VA 23709.
2. NSN and NNSY perform ship repair operations including application of coatings and are classified as major sources of air pollution. NSN and NNSY are subject to 40 CFR Part 63 Subpart II, National Emission Standard for Shipbuilding and Ship Repair (Surface Coating). The Regulations provide Virginia delegated authority to implement and enforce standards of 40 CFR Part 63 Subpart II.
3. Pursuant to 40 CFR 63.785(a) (2), subject facilities are required to certify the as-supplied volatile organic compound (VOC) content for each batch of coating (i.e. paint) to be used in ship repair operations.
4. During a September 9, 2005 DEQ inspection of Naval Station Norfolk, the VOC content certifications were not available for “stock” system paint procurements to be used in ship repair operations.
5. During a January 31, 2006 DEQ inspection of Norfolk Naval Shipyard, VOC content certifications were not available for three of five selected batches of paint to be used in ship repair operations.

6. CNRMA violated 40 CFR 63.785(a) (2) by failing to provide VOC content certifications for batches of paint to be used in ship repair operations at NSN and NNSY.
7. DEQ issued a Notice of Violation on April 4, 2006 to the Commander, Navy Region, Mid-Atlantic that has responsibility for Naval Station Norfolk and Norfolk Naval Shipyard, advising of the above facts and applicable regulatory and statutory citations.

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

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316.C, orders CNRMA, and CNRMA voluntarily agrees to provide to DEQ within 90 days of the effective date of this Order, an approvable plan to address availability of VOC content certifications for paint to be used in ship repair operations at NSN and NNSY. Within 30 days of DEQ plan approval, the CNRMA shall implement the plan.

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

1. The Board may modify, rewrite, or amend the Order with the consent of the CNRMA for good cause shown by the CNRMA, 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 the CNRMA for NSN and NNSY by DEQ on April 4, 2006. 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 only, CNRMA admits the jurisdictional allegations in the Order but does not admit the factual allegations or legal conclusions contained herein.
4. The CNRMA 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 substantive or procedural rights to which the CNRMA is entitled by Federal law, 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 the CNRMA 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.
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.
7. The CNRMA 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, national emergency declared by the President and other circumstances beyond the CNRMA's control, strike, or such other occurrence. The CNRMA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The CNRMA 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 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. This Order shall become effective upon execution by both the Director or his designee and the CNRMA. Notwithstanding the foregoing, the CNRMA agrees to be bound by any compliance date which precedes the effective date of this Order.

10. In accordance with the Federal Anti-Deficiency Act, the obligations of the Navy under this section are expressly conditioned on the availability of Congressional appropriations, which the CNRMA agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, the CNRMA will promptly inform the TRO of DEQ. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with the CNRMA's consent.
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 the CNRMA. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the CNRMA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable. At the CNRMA's request, the Board or Director will also terminate this Order upon completion of the undertakings listed in Section D.
12. By its signature below, the CNRMA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Oct 4, 2006.

Francis L. Daniel  
Francis L. Daniel

Accepted on behalf of Commander, Navy Region, Mid-Atlantic by:

By: Stuart Bailey  
Date: 3 OCT 2006

Commonwealth of Virginia  
City/County of NOVA/IN

The foregoing document was signed and acknowledged before me this 3rd day of October, 2006, by STUART BAILEY,  
(month) (name)

CHIEF OF STAFF, U.S. Navy, on behalf of Navy Region, Mid-Atlantic.  
(title)

Stuart Bailey  
Notary Public

My commission expires: 31 Dec 2018