



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2103

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO Plasser American Corporation

Registration No. 60991

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and 10.1-1316, between the State Air Pollution Control Board and Plasser American Corporation for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the Regulations for the Control and Abatement of Air Pollution.

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 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.
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. "Order" means this document, also known as a Consent Order.
5. "Plasser" means Plasser American Corporation, a company certified to do business in Virginia.

6. "Regulations" mean the Regulations for the Control and Abatement of Air Pollution, located in the Virginia Administrative Code ("VAC"), 9 VAC 5-10-10 *et seq.*
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Virginia Air Pollution Control Law" means the laws located in the Virginia Code ("Va. Code") (1950), as amended, Va. Code § 10.1-1300 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. Plasser manufactures and overhauls railroad maintenance machinery at a 14.61-acre facility ("Facility") located at 2001 Myers Road in Chesapeake, Virginia.
2. Plasser operates under a minor New Source Review ("NSR") air permit, issued on April 28, 1992, by the Board for the installation and operation of two paint booths at the Facility.
3. On September 19, 2007, DEQ compliance staff inspected the Facility and observed a new Wheelabrator steel shot abrasive blasting machine ("Wheelabrator Unit") in the frame shop that had been in operation since May 2007 and a smaller Clemco "Black Beauty" abrasive blasting machine ("Clemco Unit") located outdoors that had been in operation since 1993. A review of DEQ files did not find an air permit for either the Wheelabrator Unit or the Clemco Unit.
4. On October 29, 2007, at the request of DEQ, Plasser submitted a "Form 7" air permit application for the new Wheelabrator Unit and the Clemco Unit. A review of the air permit application by DEQ permitting staff indicated that an air permit was required for the two abrasive blasting machines. Plasser violated 9 VAC-5-80-1120 A of the Regulations by installing and operating the Wheelabrator Unit and the Clemco Unit without a permit.
5. On December 19, 2007, DEQ issued Plasser a Notice of Violation for the construction of the Wheelabrator Unit and Clemco Unit without a permit.
6. On December 20, 2007, the DEQ issued to Plasser a NSR Stationary Source Permit to Construct and Operate air permit for the installation and operation of the Wheelabrator Unit and the Clemco Unit.
7. In order to resolve these violations, Plasser has agreed to pay a civil charge, as required in Section D of this Order.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders Plasser American Corporation and Plasser American Corporation voluntarily agrees, to pay a civil charge of \$12,760.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," and shall be sent to:

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

Either on a transmittal letter or as a notation on the check, Plasser American Corporation shall indicate that this submission of Payment is pursuant to this Order, which shall include Plasser American Corporation's Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Plasser American Corporation, for good cause shown by Plasser American Corporation, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Plasser American Corporation on December 19, 2007. 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 the purposes of this Order and subsequent actions with respect to this Order, Plasser American Corporation admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Plasser American Corporation 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. Plasser American Corporation declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia 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 Plasser American Corporation 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. Plasser American Corporation 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. Plasser American Corporation shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Plasser American Corporation shall notify the TRO 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 TRO 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 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 Plasser American Corporation. Notwithstanding the foregoing, Plasser American Corporation 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 Plasser American Corporation. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Plasser American Corporation 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, Plasser American Corporation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7 day of October, 2008.

Francis L. Daniel
Francis L. Daniel

Plasser American Corporation voluntarily agrees to the issuance of this Order.

By: Rebecca Lee

Date: 1 Oct 2008

Commonwealth of Virginia

City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 1st day of October, 2008, by Robin R. Loskawski, who is
(month) (name)

Vice president and
~~secretary-treasurer~~ of Plasser American Corporation on behalf of Plasser American
(title) Corporation.

Michelle Salopek
Notary Public

My commission expires: 10/31/2011

