



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2009

www.deq.virginia.gov

Doug Domenech  
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  
WESTERN INDUSTRIES-NORTH, LLC  
FOR  
WESTERN FUMIGATION, SUFFOLK**

**Registration No. 61580**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and 1316, between the State Air Pollution Control Board and Western Industries-North, LLC regarding the Western Fumigation Suffolk facility, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the and regulations.

**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 citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Case-by-case MACT determination" means a determination by the Board, pursuant to the requirements of Article 7 (9 VAC 5-80-1400 *et seq.*), which establishes a MACT emission limitation, MACT work practice standard, or other MACT requirements for a stationary source subject to Article 7 (9 VAC 5-80-1400 *et seq.*).
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, as described in Va. Code § 10.1-1185.

5. "EPA" means the United States Environmental Protection Agency.
6. "Facility" means the Western Industries-North, LLC facility known as Western Fumigation located at 4165 Pruden Blvd 3, in Suffolk, Virginia. The facility uses methyl bromide (aka bromomethane, CAS #74839), an EPA listed hazardous air pollutant ("HAP"), as the main fumigation agent for various products, including wood, logs, and other commodities.
7. "Federal operating permit" means a permit issued under Article 1 (9 VAC 5-80-50 et seq.) of Part II of 9 VAC 5 Chapter 80.
8. "Hazardous Air Pollutant" or "HAP" means any air pollutant listed in § 112(b) of the federal Clean Air Act as amended by 40 CFR 63.
9. "MACT" or "Maximum achievable control technology emission limitation for new sources" means the emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of deduction in emissions that the permitting authority, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.
10. "Major new source review permit" or "Major NSR permit" means a permit issued under the major new source review program
11. "Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the board establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this definition.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
14. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
15. "Western" means Western Industries-North, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Western is a "person" within the meaning of Va. Code § 10.1-1300.
16. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

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

1. Western owns and operates the Facility in Suffolk, Virginia. The Facility uses methyl bromide (aka bromomethane, CAS #74839), an EPA listed hazardous air pollutant (“HAP”), as the main fumigation agent for various products, including wood, logs, but no other commodities. The use by Western of methyl bromide as a fumigant is allowed by 40 CFR Part 82, effective January 1, 2003, an allowable exemption for production and consumption of methyl bromide for quarantine and preshipment purposes. Western states that fumigation treatments are performed at the Facility under the direction of on-site US Department of Agriculture (“USDA”) inspectors in accordance with detailed treatment protocols developed by USDA Animal and Plant Health Inspection Service (“APHIS”). The use of methyl bromide under the direction of USDA does not provide relief from requirements to obtain Virginia air permits.
2. On May 20, 2009, DEQ staff conducted a Partial Compliance Evaluation of the Facility for compliance with Virginia Air Pollution Control Law and the Regulations. Based upon the inspection and follow-up information, Department staff made the following observation:

DEQ staff observed that fumigation using hazardous air pollutant methyl bromide is performed on-site, in a building, in containers or under tarps. According to Western, the Facility began operating on October 16, 2006.
3. A Request for Corrective Action was issued to Western on June 12, 2009 for Western to submit a “Form 7” Application to DEQ for Virginia air permit applicability review.
4. On July 7, 2009, DEQ received a Form 7 Application from Western for the Facility. Subsequent information provided to DEQ air permitting indicated that the Facility has emitted more than 10 tons per year, also known as a major source, of the HAP methyl bromide, requiring Western to obtain Virginia Article 1 (9 VAC 5-80-50 *et seq.*) and Article 7 - Major New Source Review Permit (9 VAC 5-80-1400 *et seq.*) air permits for the Facility.
5. DEQ staff met with Western on January 11, 2010, at which time Western confirmed that the Facility has emitted more than 10 tons per year of the HAP methyl bromide.
6. As emitting more than 10 tons per year of a HAP, Western is subject to the MACT air toxic regulatory program, and has submitted to DEQ information assessing maximum achievable control technology for the Board to make a case-by-case MACT determination pursuant to Article 7, Part II of Chapter 80 of the Regulations, as required by Section 112(g) of the 1970 Clean Air Act (42 USC §7401 *et seq.*).
7. 9 VAC 5-80-1420(A) states that “No owner or other person shall begin actual construction or reconstruction of any major source of hazardous air pollutants without first obtaining from the board a permit to construct and operate or to reconstruct and operate such source.”
8. A review of DEQ files did not find notifications from Western regarding the dates of construction, anticipated startup, or actual startup of the Facility.
9. 9 VAC 5-50-50(A) states that “Any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board of: 1) the date of commencement of construction, reconstruction or modification of a new or modified source postmarked no later than 30 days after such

date; 2) the anticipated date of initial startup of a new or modified source postmarked not more than 60 days nor less than 30 days prior to such date; and 3) the actual date of initial startup of a new or modified source postmarked within 15 days after such date.”

10. A review of DEQ files did not find a Form 805 Application for the Facility. Western states it was unaware of the requirements to submit a Form 805 Application prior to commencing operations.
11. 9 VAC 5-80-80(B) and 9 VAC 5-80-80(C).2 states that “For each stationary source, the owner shall submit a timely and complete application permit application in accordance with subsections C and D.” and “The owner of a source subject to the new source review program shall file a complete application to obtain a permit or permit revision within 12 months after commencing operation.”
12. On February 5, 2010, based upon the inspection, Form 7 air permit application, and subsequent information, the DEQ issued a NOV to Western for the violations described in paragraphs C.7 through C.11 above.
13. On February 10, 2010, Western submitted a response to the NOV.
14. Based on the results of the May 20, 2009 inspection, the January 11, 2010 meeting, and subsequent information, the Board concluded that Western has violated 9 VAC 5-80-1420(A), 9 VAC 5-50-50(A), and 9 VAC 5-80-80(B) as described in paragraphs C.7 through C.11 above.
15. In order for Western to return to compliance, DEQ staff and representatives of Western have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.
16. On April 30, 2010, Western submitted to DEQ for the Facility a “case-by-case MACT determination” as required by Section 112(g) of the 1970 Clean Air Act (42 USC §7401 *et seq.*).
17. On April 30, 2010, Western submitted to DEQ for the Facility a Form 805 Application and a 112(g) Application.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Western Industries–North, LLC, and Western Industries–North, LLC, in settlement of the violations cited in this Order, voluntarily agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$51,270.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

<u>Payment Due Date</u>	<u>Payment Amount</u>
July 30, 2010	\$17,090.00
August 30, 2010	\$17,090.00
September 30, 2010	\$17,090.00

3. If the Department fails to receive a civil charge payment pursuant to the schedule described in the above paragraphs D.2., the payment shall be deemed late. If any payment is late, the Department shall have the right to demand in writing full payment of the entire remaining balance under this Order by Western Industries–North, LLC, and the entire remaining balance of the civil charge shall be immediately due and owing. Western Industries–North, LLC shall pay the entire remaining balance within 15 days of

receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.

4. All payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

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

5. Western Industries-North, LLC shall include its Federal Employer Identification Number (FEIN) [20-0890604] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

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

1. The Board may modify, rewrite, or amend this Order with the consent of Western for good cause shown by Western, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Western admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact, and conclusions of law in this Order.
4. Western 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. Western declares it has received fair and due process under the Administrative Process Act 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 modify, rewrite, amend, or enforce this Order.
6. Failure by Western 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. Western does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.

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. Western 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. Western shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Western shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this 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 verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Western 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.

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 Western. Nevertheless, Western agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. Western petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Western.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Western from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Western and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

- 13. The undersigned representative of Western 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 Western to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Western.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Western voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 22 day of June, 2010.

Francis L. Daniel  
 Francis L. Daniel, Regional Director  
 Department of Environmental Quality

Western Industries-North, LLC voluntarily agrees to the issuance of this Order.

Date: 6/21/2010 By: Michael F. O'Connor  
 (Person) (Title)

Western Industries-North, LLC

Commonwealth of ~~Virginia~~ Pa.  
 City/County of Delaware

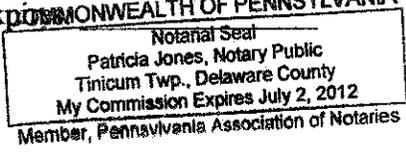
The foregoing document was signed and acknowledged before me this 21st day of June, 2010,  
 by MICHAEL F. O'CONNOR who is Operations Director of Western  
 Industries-North, LLC, on behalf of the corporation.

[Signature]  
 Notary Public

Registration No.

My commission expires ~~2011~~ COMMONWEALTH OF PENNSYLVANIA

Notary seal:



## APPENDIX A

### **1. Permits Required to Construct or Operate**

Western Industries-North, LLC shall:

- a) Submit to DEQ all information requested by the Department need to process the information submitted on April 30, 2010, referenced in Paragraph C.16 and C.17 of this Order.
- b) Western shall keep records at the Facility sufficient to calculate monthly and annual emissions until the Permits are issued. Records shall also include fuel usage, production values, maintenance logs, and operator training.
- c) If Western is unable to provide any information requested by the Department it shall submit correspondence demonstrating reasonable progress is being made toward meeting the request within four business days of discovery.
- d) Within 30 days of the execution of this Order, Western shall submit all required notifications required under 9 VAC 5-50-50(A).

### **2. Certification of Documents and Reports**

In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, Western, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

### **3. DEQ Contact**

Unless otherwise specified in this Order, Western shall submit all requirements of Appendix A of this Order to:

Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Boulevard  
Virginia Beach, VA 23462