

# **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION**

## **ORDER BY CONSENT ISSUED TO**

**Berryville Graphics  
Berryville, Virginia  
Registration No: 80400**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1187, -1184, -1307(D), -1309, and -1316(C), between the State Air Pollution Control Board and Berryville Graphics for the purpose of resolving certain alleged 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 citizens’ board 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 Special Order.
6. “Berryville” means Berryville Graphics, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Facility” means Berryville’s printing facility located at 25 Jack Enders Boulevard, Berryville, Virginia 22611.
8. “VRO” means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
9. “CFR” means Code of Federal Regulations.

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

1. Berryville owns and operates the Facility, which is subject to applicable Regulations of the Board.
2. During an unannounced DEQ inspection of the Facility on April 28, 2003, DEQ air compliance inspector David Taylor discovered that a new printing press, Press #2270, for which an application was still pending, was being installed and appeared to be close to operational.
3. The provisions in Title 9, Chapter 80, Part II, Article 6 of the Virginia Administrative Code apply to the construction, reconstruction, relocation, and modification of any stationary source. Specifically, 9 VAC 5-80-1120.A provides that “No owner or other person shall begin actual construction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source.”
4. Condition #1 of Berryville’s stationary source permit to modify and operate, effective April 9, 2002, provides that “Any changes in the permit application specifications or any existing facilities which alter the impact of the facility on air quality may require a permit. Failure to obtain such a permit prior to construction may result in enforcement action. (9 VAC 5-80-830).”
5. Section 9 VAC 5-80-1110.C defines “begin actual construction” as “the initiation of permanent physical on-site construction of an emissions unit.”
6. DEQ issued to Berryville a Notice of Violation (NOV) dated June 4, 2003 alleging that Berryville had violated 9 VAC 5-80-1120.A, by beginning actual construction and installation of a stationary source without first obtaining the appropriate permit.
7. DEQ ascertained that Berryville did not begin actual operation or testing of the new press until after the DEQ permit was issued on June 6, 2003. In a letter to DEQ dated June 24, 2003, Berryville stated that new Press #2270 had commenced Commercial Operation on June 19, 2003.

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

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1186(2), 10.1-1309, and 10.1-1316(C), orders Berryville and Berryville voluntarily agrees to pay a civil charge of \$1,856.00 in settlement of the violations cited in this Order. Therefore:

1. Berryville agrees to pay the amount of **\$1,856.00** of this civil charge within 30 days of the effective date of this Order. The effective date of this Order shall be the date this Order is signed by the Director of the Va. DEQ. Payment must indicate that the civil charge is paid pursuant to this Order, and shall include Berryville's Federal Identification Number. Payment shall be by check, certified check, money order, or cashier's check payable to **"Treasurer of the Commonwealth of Virginia"** and sent to:

**Receipts Control  
Department of Environmental Quality  
P. O. Box 10150  
Richmond, Virginia 23240**

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

1. The Board may modify, rewrite, or amend the Order with the consent of Berryville, for good cause shown by Berryville, or on its own motion after notice to Berryville and its opportunity to be heard.
2. This Order addresses and resolves only those violations 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 this 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, Berryville admits to the allegations in Section C of this Order.
4. Berryville 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. Berryville declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the 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 of Berryville to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Berryville 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. Berryville 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. Berryville shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Berryville 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 Berryville 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 Berryville. Notwithstanding the foregoing, Berryville 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 Berryville. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Berryville from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

By its signature below, Berryville voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Robert G. Burnley  
Department of Environmental Quality

Berryville voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of Berryville, on behalf of the Corporation.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.