



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

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### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION – ORDER BY CONSENT ISSUED TO MXI ENVIRONMENTAL SERVICES, LLC Registration No. 11447

#### **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 MXI Environmental Services, LLC for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings 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. “CFR” means the Code of Federal Regulations, as incorporated into the Regulations.
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. “Facility” means MXI Environmental Services, LLC, located at 26319 Old Trail Road in Washington County, Virginia.

6. "MXI Environmental Services" or "MXI" means MXI Environmental Services, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. MXI Environmental Services is a "person" within the meaning of Va. Code § 10.1 – 1300.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1 – 1309.
8. "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.
9. "PCE" means a partial compliance evaluation by DEQ staff.
10. "Permit" means a NSR Permit to modify and operate an evaporator and a natural gas/used oil-fired boiler which was issued under the Air Pollution Control Law and the Regulations to MXI Environmental Services, LLC, dated October 8, 2009, amended October 29, 2009.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 chapters 10 through 80.
12. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "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 Facts and Conclusions of Law**

1. MXI Environmental Services owns and operates the Facility in Washington County, Virginia. The Facility is an ethyl alcohol distillation operation. The Facility is subject of the Permit which allows the company to operate an evaporator and a natural gas/used oil-fired boiler.
2. On June 24, 2011, Department staff conducted a PCE at the Facility in regard to an odor complaint (IR 2011-S-3571 (June 24, 2011) for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the review and follow-up information, Department staff made the following observations:

- a. Odors were being emitted from the process water holding tank that was overflowing onto the plant floor and alcohol products were being stored in an open container.
  - b. MXI provided a written response that the tank and container were open due to required maintenance and related safety procedures; however there was no written record of that maintenance.
3. Condition No. 3 of the Permit states in part, "Volatile Organic Compounds from the ethanol recovery facility shall be controlled by proper operation and maintenance of all process, storage, and transfer equipment...(9 VAC 5-50-260)."
4. Condition No. 4 of the Permit states in part. "At all times, processing and disposal of volatile organic compounds shall be accomplished by taking measures, consistent with air pollution control practices for minimizing emissions. Volatile organic compounds shall not be intentionally spilled, discarded in sewers, stored in open containers...(9 VAC 5-50-260)."
5. 9 VAC 5-50-260 requires that, "No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of that resultant from using best available control technology, as reflected in any condition that may be placed upon the permit approval for the facility."
6. Condition No. 38 of the Permit states in part, "Odorous emissions...shall be controlled by equipment manufacturers' operating and best management practice recommendations for minimizing emissions and optimizing performance...(9 VAC 5-80-1180 and 9 VAC 5-50-140)."
7. Condition No. 39 of the Permit states in part," At all times, processing and disposal of odorous emission-producing materials shall be accomplished by taking measures, consistent with air pollution control practices, for minimizing emissions. Odorous emission-producing materials shall not be intentionally spilled,...stored in open containers...All drums of alcohol products shall remain covered unless they are being actively pumped...(9 VAC 5-80-1180 and 9 VAC 5-50-140)."
8. 9 VAC 5-50-140 requires that, "A. The owner shall use the best available control technology as approved by the board for the control of odorous emissions. B. No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility and odorous emissions in excess of that resultant from using best available control technology, as reflected in any condition that may be placed upon the permit approval for the facility."
9. 9 VAC 5-80-1180 (C) requires that, "...Permits granted pursuant to this article may contain emissions standards as necessary to implement the provisions of this article and 9VAC 5-50-260. The following criteria apply in establishing emission

standards to the extent necessary to assure that emissions levels are enforceable as a practical matter...3. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them...”

10. On July 20, 2011, based on the evaluation and follow-up information, the Department issued a Notice of Violation No. NOV-014-0711-SW to MXI Environmental Services, for the violations described in paragraphs C(2) through C(9), above.
11. On July 27, 2011, MXI Environmental Services contacted DEQ staff by electronic correspondence to set up a meeting to discuss the NOV.
12. On August 9, 2011, Department staff met with representatives of MXI Environmental Services to discuss the violations.
13. On August 31, 2011, MXI Environmental Services submitted written comments regarding applicability of the violations noted in the Notice of Violation.
14. On October 12, 2011, DEQ responded to MXI Environmental Services’ comments regarding the violations noted in the Notice of Violation.
15. On October 13, 2011 and October 31, 2011, Department staff conducted PCEs of the Facility records for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:
  - a. Reports for the methanol content of the evaporator distillate fed to the cooling towers indicate Laboratory samples exceeded the hold time.
16. Condition No. 44 of the Permit states in part, “Concurrent with the sampling required by Condition 16 of this permit, the permittee shall sample and analyze the ethanol recovery facility’s evaporator distillate that is fed to the cooling towers, for methanol content by a gas chromatographic method with an appropriate detection method (i.e., thermal conductivity or flame ionization), or other methods approved by the Director, Southwest Regional Office...(9 VAC 5-80-1200, 9 VAC 5-50-30, and 9 VAC 5-170-160)”
17. 9 VAC 5-50-30 requires that, “Performance tests for new or modified sources shall be conducted and reported and data shall be reduced as set forth in this chapter and the test methods and procedures contained in each applicable subpart listed in 9VAC5-50-410 unless the board (i) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology; (ii) approves the use of an equivalent method; (iii) approves the use of an alternative method the results of which the board has determined to be adequate for indicating whether a specific source is in compliance...”

18. 9 VAC 5-80-1200 requires , “For sources other than those specified in subsection D of this section, the requirements of subsections A, B and C of this section shall be met unless the board: 1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology; 2. Approves the use of an equivalent method; 3. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance...”
19. On November 4, 2011, Department staff conducted a PCE of a Facility VOC reports for the third quarter of 2011, for compliance with the requirement of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:
  - a. The quarterly VOC report for the VOC content of the evaporator distillate that is fed to the cooling towers was received by DEQ on November 3, 2011, 34 days after the end of the reporting period.
20. Condition No. 16 of the Permit states in part, “Samples shall be taken weekly and analyses shall be conducted on the samples for weight percent of volatile organic compounds in the evaporator distillate that is fed to the cooling towers to determine compliance with the process limit... While conducting weekly and/or monthly sampling, sampling and analysis reports shall be submitted quarterly. These reports shall be submitted within 30 days of the end of each calendar quarter...(9 VAC 5-80-1200 and 9 VAC 5-50-30)”
21. On April 24, 2012, Department staff conducted a PCE of a Facility quarterly VOC report for the first quarter of 2012 for compliance with the requirement of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation, Department staff made the following observation:
  - a. The quarterly report demonstrated that 10 ppm methanol was detected on February 29, 2012. DEQ was not notified of the sampling result within 24 hours.
22. Condition No. 44 of the Permit states in part, “...If methanol is detected in any sample, the permittee shall notify the Director, Southwest Regional Office of the test results within 24 hours, and provide an evaluation of the potential methanol emission rate from the cooling tower(s), for compliance with the provisions of 9 VAC 60 Article 5, Emission Standards for Toxic Pollutants from New and Modified Sources...(9 VAC 5-80-1200, 9 VAC 5-50-30, and 9 VAC 5-170-160)”
23. On May 23, 2012 Department staff conducted a PCE of a Facility NSPS VVa semi-annual Report and accompanying correspondence for compliance with the requirement of the Virginia Air Pollution Control Law, the Permit, and the

Regulations. Based on the evaluation, Department staff made the following observation:

- a. The accompanying report correspondence indicates a valve leak was detected on the mole sieve November 22, 2011. Source failed to demonstrate that emissions of purged material resulting from immediate repair are greater than fugitive emissions likely to result from delay of repair. Source indicated calculation was not completed in this time frame nor has it been completed to date.
24. 40 CFR 60.482-9(a)(c) - Subpart VVa requires that delay of repair for valves and connectors will be allowed if: (1) The owner or operator demonstrates that emissions of purged material resulting from immediate repair are greater than the fugitive emissions likely to result from delay of repair, ..
25. On May 31, 2012, based on the evaluation and follow-up information, the Department issued a Notice of Violation No. NOV ASWRO8391 to MXI Environmental Services, for the violations described in paragraphs C(21) through C(24), above.
26. On June 15, 2012 MXI submitted additional information describing reasons why the valve was technically not feasible to repair immediately and followed up with an email dated June 28, 2012 which indicated a plant shutdown had occurred and the valve was repaired.
27. Based on the results of the June 24, 2011, October 13, 2011, October 31, 2011, November 4, 2011, April 24, 2012 and May 23, 2012 evaluations, the August 9, 2011 meeting, and the documentation submitted on August 31, 2011, April 19, 2012 and May 11, 2012 the Board concludes that MXI Environmental Services has violated Conditions 3, 4, 16, 38, 39, and 44 of the Permit, 9 VAC 5-50-30, 9 VAC 5-50-140, 9 VAC 5-50-260, 9 VAC 5-80-1200 and 40 CFR 60.482-9(a)(c), as described in paragraphs C(3 - 8), C(16-18), C(20), C(22), and C(24) above.
28. In order for MXI Environmental Services to return to compliance, DEQ staff and representatives of MXI Environmental Services have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

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

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and – 1316, the Board orders MXI Environmental Services, LLC and MXI Environmental Services, LLC agrees:

1. To perform the actions described in Appendix A of this Order; and

2. To pay a civil charge of \$3,895 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, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

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

MXI Environmental Services, LLC shall include its Federal Employer Identification Number (FEIN) 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 the Order with the consent of MXI Environmental Services, LLC for good cause shown by MXI Environmental Services, LLC, 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 only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or 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, MXI Environmental Services, LLC admits the jurisdictional allegations and agrees not to contest, but neither admits nor denies the findings of fact, and conclusions of law contained herein.
4. MXI Environmental Services, LLC 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. MXI Environmental Services, LLC 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 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 or Director to modify, rewrite, amend, or enforce this Order.

6. Failure by MXI Environmental Services, LLC 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. MXI Environmental Services, LLC 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. MXI Environmental Services, LLC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. MXI Environmental Services, LLC shall notify 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 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 listed above, which MXI Environmental Services, LLC intends to assert will result in the impossibility of compliance, shall constitute 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 MXI Environmental Services, LLC. Nevertheless, MXI Environmental Services, LLC 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. The Director or his designee terminates the Order after MXI Environmental Services, LLC has completed all of the requirements of the Order;
- b. MXI Environmental Services, LLC 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
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to MXI Environmental Services, LLC.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve MXI Environmental Services, LLC 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 MXI Environmental Services, LLC 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 MXI Environmental Services, LLC 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 MXI Environmental Services, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of MXI Environmental Services, LLC.
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, MXI Environmental Services, LLC voluntarily agrees to the issuance of this Order.

And it is ORDERED this 7th day of August, 2012

Dallas R. Sizemore  
Dallas Sizemore, Regional Director  
Department of Environmental Quality

MXI Environmental Services, LLC voluntarily agrees to the issuance of this Order.

Date: 6 August 2012 By: Brian Potter, Operations Manager  
Brian Potter, Operations Manager  
MXI Environmental Services, LLC

Commonwealth of Virginia

City/County of Washington

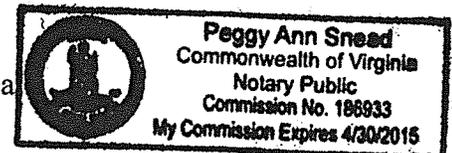
The foregoing document was signed and acknowledged before me this 6th day of August, 2012, by Brian Potter who is Operations Manager of MXI Environmental Services, LLC, on behalf of the company.

Peggy Ann Sneed  
Notary Public

186933  
Registration No.

My commission expires:  
04/30/2015

Notary Seal



## APPENDIX A SCHEDULE OF COMPLIANCE

### 1. MXI Environmental Services, LLC shall:

- a. Comply with all conditions of their current permit dated October 29, 2009.
- b. Operation and maintenance procedures for the water holding tank shall be incorporated into the MXI facility maintenance plan.
- c. Comply with modified Odor event procedures submitted October 2011.
- d. Comply with the requirements of 40 CFR 60.480a – 60.489a Subpart VVa (Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced after November 7, 2006) for all applicable equipment upon signature of this Order.
- e. Modify LDAR plan by August 15, 2012 to incorporate delay of repair.
- f. Conduct vent flow rate testing by August 24, 2012, in accordance with the applicable requirements of 40 CFR 60.660 – 60.668 Subpart NNN (Volatile Organic Compounds (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations).
- g. Immediately begin recordkeeping and reporting in accordance with 40 CFR 60.664(g) and (o) of 60.665 if the vent flow rate is less than 0.008scm/min.

If the vent flow rate is equal to or greater than 0.008scm/min MXI Environmental Services, LLC shall submit a compliance plan, within 20 days of the vent flow test, and comply with all applicable portions of 40 CFR Part 60 Subpart NNN including the initial performance test within 90 days of the vent flow rate test.

### 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, MXI Environmental Services, LLC, 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, MXI Environmental Services, LLC shall submit all requirements of Appendix A of this Order to:

Crystal C. Bazyk  
Air Compliance Manager  
VA DEQ – SWRO  
P.O. Box 1688  
Abingdon VA 24210  
(276) 676-4829  
(276) 676-4899 Fax  
[ccbazyk@deq.virginia.gov](mailto:ccbazyk@deq.virginia.gov)