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**DEQ-SWRO**

# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOUTHWEST REGIONAL OFFICE

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Secretary of Natural Resources

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David K. Paylor  
Director

Michael D. Overstreet  
Regional Director

## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO APAC – Atlantic Inc., Thompson Arthur Division Registration No. 10990

### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1301, 1307, 1309, 1316 and 10.1 – 1184, between the State Air Pollution Control Board and APAC – Atlantic Inc., Thompson Arthur Division for the purpose of resolving certain violations of State Air Pollution Control Board Regulations.

### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings 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 collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "Company" means APAC – Atlantic Inc., Thompson Arthur Division, 298 Wysor Hwy, Sylvatus, VA 24313

SECTION C: Findings of Facts and Conclusions of Law

1. On November 1, 2006, Jerry Wilson, Environmental Inspector, Sr., of the Virginia Department of Environmental Quality – SWRO, conducted an air compliance inspection and subsequent file review indicating that the installation of a ~ 25,000 gallon fuel oil tank, an asphalt drum replacement and the use of a non-approved fuel without a required air permit modification had taken place at your Sylvatus facility. The following deficiencies were observed:
  - a. Permit condition No.1 of APAC-Atlantic's construct and operate permit dated February 18, 1998 as amended February 23, 1998, November 16, 2000 and January 26, 2001 states in part, "...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 permit prior to construction may result in enforcement action." (9 VAC 5-20-110 of State Regulations) APAC- Atlantic, Inc. installed a 25,000 gallon fuel oil tank, different asphalt plant drum and used a non-approved fuel without first obtaining a permit modification.
  - b. Permit condition No.7 of APAC-Atlantic's construct and operate permit dated February 18, 1998 as amended February 23, 1998, November 16, 2000 and January 26, 2001, states, "The approved fuel for the drum dryer and asphalt heater is distillate oil. Distillate oil is defined as fuel oil that meets the specifications for No.1 or 2 under the ASTM D396-78 "Standard Specifications for Fuel Oils". A change in the fuel may require a permit to modify and operate" (9 VAC 5-170-160 of State Regulations) The Sylvatus plant was using No. 4 fuel oil to operate the plant.
  - c. Permit condition No.13 of APAC-Atlantic's construct and operate permit dated February 18, 1998 as amended February 23, 1998, November 16, 2000 and January 26, 2001 states in part, "The sulfur content to be burned in the drum dryer and asphalt heater shall not exceed 0.5% by weight per shipment..." (9 VAC 5-170-160 of State Regulations) At least one shipment of fuel oil indicated 0.78% sulfur content by weight. Records were submitted demonstrating that no shipments of No. 4 fuel oil were received with tested sulfur greater than 0.5% by weight per shipment. Specifications, however allowed for sulfur of up to 2.0%.
2. On December 21, 2006, DEQ sent a Notice of Violation Letter (NOV No. 12-11-SWRO-2006) by Certified Mail-Return Receipt Requested, to APAC – Atlantic Inc., Thompson Arthur Division, informing the Company that DEQ had reason to believe that the violations referenced in (1)(a-c) had occurred.
3. The following regulations may be applicable in part or whole to the above listed permit deficiencies : 9 VAC 5-170-160.A – (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part: "The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits".

Cite regulation	Description (title) of regulation
9 VAC 5-20-110	General Administration – Conditions on Approval
9 VAC 5-170-160	General Administration – Conditions on Approval

4. On November 1, 2006, DEQ received correspondence from APAC – Atlantic Inc., Thompson Arthur Division, demonstrating the plant's production for 2006 and fuel records. On January 22, 2007, DEQ received correspondence from APAC – Atlantic Inc., Thompson Arthur Division responding to the issued NOV stating No. 4 fuel oil was not used after the DEQ inspection on November 1, 2006. On January 31, 2007, DEQ received correspondence from APAC – Atlantic Inc., Thompson Arthur Division, demonstrating fuel analysis certification and the date for installation of the 25,000 gallon tank, completion of piping and start of plant. On December 8, 2005, DEQ submitted a letter to APAC – Atlantic Inc., Thompson Arthur Division acknowledging the replacement of the existing drum dryer with one of equal capacity and stating the evaluation of this replacement did not appear to require any 9 VAC Article 6 permit changes at the time.

**SECTION D: Agreement and Order**

1. By virtue of the authority granted it pursuant to Va. Code §§ 10.1 – 1309 and 10.1-1316 and upon consideration of Va. Code § 10.1 – 1186.2, the Board orders APAC – Atlantic Inc., Thompson Arthur Division and APAC – Atlantic Inc., Thompson Arthur Division voluntarily agrees, to a civil charge of \$23,596.30 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

The payment shall include APAC – Atlantic Inc., Thompson Arthur Division's Federal ID number and shall identify that payment is being made as a result of this Order. The payment shall be made within 30 days of the effective date of this Order.

**SECTION E: Administrative Provisions**

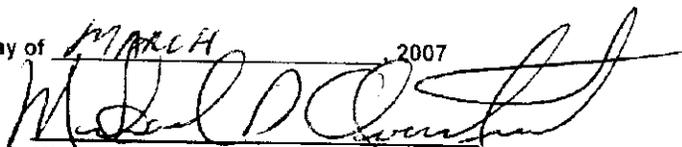
1. The Board may modify, rewrite, or amend the Order with the consent of APAC – Atlantic Inc., Thompson Arthur Division for good cause shown by the Company, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the Company's Stationary Source Permit to Construct and Operate Permit dated February 18, 1998 as amended February 23, 1998, November 16, 2000 and January 26, 2001.
3. This Order addresses only those violations specifically identified herein. 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 APAC – Atlantic Inc., Thompson Arthur Division as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. By entering into this Order, APAC – Atlantic Inc., Thompson Arthur Division admits jurisdictional allegations, factual findings, or conclusions of law contained herein. For purposes of this Order and subsequent actions with respect to this Order, APAC – Atlantic Inc., Thompson Arthur Division agrees not to challenge the jurisdictional allegations, factual findings, and conclusions of law contained herein.

5. APAC – Atlantic Inc., Thompson Arthur Division consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. APAC – Atlantic Inc., Thompson Arthur Division declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 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 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 enforce this Order.
7. Failure by APAC – Atlantic Inc., Thompson Arthur Division 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.
8. 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.
9. APAC – Atlantic Inc., Thompson Arthur Division 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 act of God, war, strike, or such other occurrence. APAC – Atlantic Inc., Thompson Arthur Division must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. APAC – Atlantic Inc., Thompson Arthur Division shall notify the Director, Southwest Regional Office of DEQ within 24 hours with a follow-up in writing within seven 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 Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Company intend 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.
10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and APAC – Atlantic Inc., Thompson Arthur Division. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date, which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to APAC – Atlantic Inc., Thompson Arthur Division. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve APAC – Atlantic Inc., Thompson Arthur Division from its obligation imposed in this Order, shall not operate to APAC – Atlantic Inc., Thompson Arthur Division from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable

13. By its signature below, APAC – Atlantic Inc., Thompson Arthur Division voluntarily agrees to the issuance of this Order.

And it is ORDERED this 2<sup>nd</sup> day of MARCH, 2007

  
Michael D. Overstreet, Regional Director  
Department of Environmental Quality

APAC – Atlantic Inc., Thompson Arthur Division voluntarily agrees to the issuance of this Order.

  
Clarence O. Brickey  
President  
APAC – Atlantic Inc., Thompson Arthur Division  
Date: 2/28/07

Commonwealth of Virginia

City/County of Danville

The foregoing document was signed and acknowledged before me this 28<sup>th</sup> day of February, 2007 by Clarence O. Brickey on behalf of APAC – Atlantic Inc., Thompson Arthur Division

Date: 2-28-07

  
Notary Public

My commission expires: 11-30-09