



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### VALLEY REGIONAL OFFICE

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO EXTREME STEEL, INC. Registration No. 81770**

### 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 Extreme Steel, Inc. for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable 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. "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, as described in Va. Code § 10.1-1185.
4. "Extreme Steel" means Extreme Steel, Inc., a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Extreme Steel is a "person" within the meaning of Va. Code § 10.1-1300.

5. “Facility” means the Extreme Steel, Inc. facility, located at 480 Shady Elm Road in Frederick County, Virginia.
6. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. “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.
8. “Permit” means a Minor New Source Review permit to operate a metal fabrication facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Extreme Steel on May 2, 2019.
9. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” mean 9 VAC 5 chapters 10 through 80.
10. “Va. Code” means the Code of Virginia (1950), as amended.
11. “VAC” means the Virginia Administrative Code.
12. “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. Extreme Steel owns and operates the Facility in Frederick County, Virginia. The Facility fabricates steel beams and other miscellaneous metal for distribution and is the subject of the Permit dated May 2, 2019.
2. On November 19, 2018, DEQ staff conducted a site inspection at the Facility in response to a complaint of painting with a sprayer outside with no containment. Facility representatives confirmed that a portion of the material produced is painted with a structural steel primer using an airless paint sprayer, and that the spray painting is performed outside. DEQ staff advised the Facility representatives of the potential need for an air permit.
3. On December 20, 2018, Extreme Steel submitted a Form 7 application for a spray coating application. Extreme Steel submitted additional application information to DEQ in January 2019 and February 2019. Based on the results of the site inspection and review of the Form 7, DEQ determined that operation of the Facility requires a DEQ air program permit.
4. 9 VAC 5-80-1120.A. states that: “No owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article.”

5. 9 VAC 5-80-1210.E. states that: “Any owner who constructs or operates a source subject to this section not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a source subject to this section who commences construction or operation without receiving a permit hereunder shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.”
6. On February 13, 2019, DEQ issued Notice of Violation No. AVRO001113-002 to Extreme Steel for the violations described in paragraphs 2 through 5 above.
7. On May 2, 2019, DEQ issued a Minor New Source Review Permit to construct and operate a spray coating operation, correcting the violations cited in paragraphs 2 through 5 above.
8. Based on the results of the November 19, 2018 inspection and the documentation submitted during the months of December 2018, January 2019 and February 2019, the Board concludes that Extreme Steel violated 9 VAC 5-80-1120.A. as described in paragraphs 2 through 5 above.

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

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Extreme Steel, and Extreme Steel agrees to:

Pay a civil charge of \$4,695.60 within 30 days of the effective date of the 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,” and delivered to:

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

Extreme Steel 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Extreme Steel shall be liable for attorneys’ fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Extreme Steel for good cause shown by Extreme Steel, 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 and in NOV No. AVRO001113-002 dated February 13, 2019. 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, Extreme Steel admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Extreme Steel 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. Extreme Steel 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 Extreme Steel 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. Extreme Steel 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Extreme Steel shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Extreme Steel 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 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 verbally within 24 hours and in writing within three business days, 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 to inability to comply with a requirement of this Order.

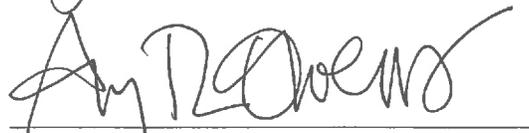
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Extreme Steel. Nevertheless, Extreme Steel agrees to be bound by any compliance date 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 Extreme Steel has completed all of the requirements of the Order;
  - b. Extreme Steel 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 Extreme Steel.

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

And it is so ORDERED this 26<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
Amy T. Owens, Regional Director  
Department of Environmental Quality

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Extreme Steel, Inc. voluntarily agrees to the issuance of this Order.

Date: 26 June 2019 By: Matthew R Brady, \_\_\_\_\_  
Matthew Brady General Manager  
Extreme Steel, Inc.

Commonwealth of Virginia  
City/County of Staunton

The foregoing document was signed and acknowledged before me this 26 day of  
June, 2019, by Matt Brady who is  
\_\_\_\_\_ of Extreme Steel, Inc., on behalf of the corporation.

\_\_\_\_\_  
Notary Public  
7693119  
\_\_\_\_\_  
Registration No.

My commission expires: 7/4/2020

Notary seal:

