



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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David K. Paylor
Director

Craig Nicol
Regional Director

Molly Joseph Ward
Secretary of Natural Resources

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
KERNEOS Inc.
FOR
Kerneos Incorporated
Registration No. 60077**

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 KERNEOS Inc., regarding Kerneos Incorporated, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit 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. "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. "Facility" means the KERNEOS Inc. facility, located at 1316 Priority Lane in Chesapeake, Virginia.

5. “Kerneos” means KERNEOS Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Kerneos is a “person” within the meaning of Va. Code § 10.1-1300.
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 Stationary Source Permit to Modify and Operate, which was issued under the Virginia Air Pollution Control Law and the Regulations to Kerneos on January 20, 2015.
9. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
10. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” mean 9 VAC 5 chapters 10 through 80.
11. “Va. Code” means the Code of Virginia (1950), as amended.
12. “VAC” means the Virginia Administrative Code.
13. “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. Kerneos owns and operates the Facility located in the Chesapeake, Virginia. The Facility is a calcium aluminate manufacturing facility and is the subject of the Permit.
2. On June 24, 2016, Department staff conducted an inspection for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the inspection, Department staff made the following observations:
 - a. Kerneos had purchased a towable bulk transfer conveyor with a dust collector that vents to the outside environment, which is deemed construction as defined by the regulations. According to DEQ records, an air permit had not been issued for the bulk transfer conveyor;
 - b. Kerneos had not notified DEQ of the bulk transfer conveyor’s construction, or anticipated or actual start update.
3. Condition 1 of the Permit provides that any changes in the permit application specifications, which alter the impact of the facility on air quality, may require a permit.

4. 9 VAC 5-80-1120(A) provides that no owner 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.
5. 9 VAC 5-80-1210(E) provides that any owner who constructs or operates a source subject to this section not in accordance with the terms and conditions of any permit, or any owner of a source subject to this section who commences construction or operation without receiving a permit shall be subject to appropriate enforcement action.
6. 9 VAC 5-50-50(A) requires that any owner of a new or modified source shall provide written notice of the date of commencement of construction, reconstruction or modification of a new or modified source no later than 30 days after such date.
7. On November 2, 2016, based on the inspection and follow-up information, the Department issued Notice of Violation No. TR16-1101 to Kerneos for the violations described in paragraph C(2) above.
8. On November 9, 2016, Kerneos submitted a written response to the NOV.
9. Based on the results of the June 24, 2016 inspection, the Board concludes that Kerneos has violated Permit Condition 1 and 9 VAC 5-80-1120(A), 9 VAC 5-80-1210(E), and 9 VAC 5-50-50(A), as described in paragraphs C(2) through C(6), above.
10. On July 14, 2016, Kerneos submitted a Form 7 air permit to DEQ. On September 12, 2016, DEQ issued a minor New Source Review Stationary Source Permit to Construct and Operate the bulk transfer conveyor.
11. Kerneos has submitted documentation verifying that violations described in paragraphs C(2) through C(6), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Kerneos, and Kerneos agrees to pay a civil charge of \$6,258.00 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

Kerneos 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, Kerneos 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 Kerneos for good cause shown by Kerneos, 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. TR16-1101 dated November 2, 2016. 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, Kerneos admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law contained herein.
4. Kerneos 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. Kerneos 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 Kerneos 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. Kerneos 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. Kerneos shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kerneos 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 Kerneos. Nevertheless, Kerneos 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 Kerneos has completed all of the requirements of the Order;
 - b. Kerneos 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 Kerneos.

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

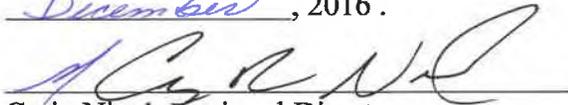
12. Any plans, reports, schedules or specifications attached hereto or submitted by Kerneos and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Kerneos 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 Kerneos to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Kerneos.

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, Kerneos voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21 day of December, 2016.

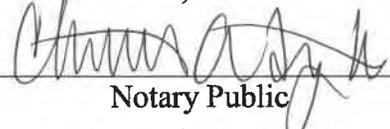

Craig Nicol, Regional Director
Department of Environmental Quality

KERNEOS Inc. voluntarily agrees to the issuance of this Order.

Date: 12/20/2016 By: Graham Reid, PLANT MANAGER
(Person) (Title)
KERNEOS Inc.

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 20th day of December, 2016, by Graham Reid who is Plant Manager of KERNEOS Inc., on behalf of the corporation.


Notary Public
190703
Registration No.

My commission expires: 10-31-2019

Notary seal:

CHRISTINE A LYTLE
NOTARY PUBLIC REG #190703
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES: 10-31-2019