



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
TIDEWATER REGIONAL OFFICE  
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Secretary of Natural Resources

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Director

Craig Nicol  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
KmX Chemical Corp.  
FOR  
KmX Chemical Corp.'s New Church Facility  
VPDES Permit No. VAR05  
Storm Water Registration No. VAR050491**

## **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and KmX Chemical Corp., regarding the KmX Chemical Corp.'s New Church Facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

## **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "CSCE" means comprehensive site compliance evaluation.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means the discharge of a pollutant.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "Facility" means the KmX facility located at 30474 Energy Drive in New Church, Virginia, from which discharges of stormwater associated with industrial activity occur.
9. "KmX" means KmX Chemical Corp., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. KmX is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014, and which expires on June 30, 2019. KmX applied for registration under the Permit and was issued Registration No. VAR050491 on July 1, 2014.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of

animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

15. “Registration statement” means a registration statement for coverage under a storm water general permit.
16. “Regulation” means the Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10, *et seq.*
17. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. “SWPPP” means Stormwater Pollution Prevention Plan.
20. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
21. “Va. Code” means the Code of Virginia (1950), as amended.
22. “VAC” means the Virginia Administrative Code.
23. “VPDES” means Virginia Pollutant Discharge Elimination System.

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

1. KmX owns and operates the Facility, which recovers organic solvents from by-product and co-product streams to divert them from incineration or disposal in a landfill. The stormwater discharge from the Facility is the subject of the Permit.
2. The Permit allows KmX to discharge stormwater associated with industrial activity from the Facility to Pitts Creek and then to the Pokomoke River, in strict compliance with the terms and conditions of the Permit.

3. Pitts Creek and the Pokomoke River are located in the Chesapeake Bay, Ocean, and Small Coastal Basin watershed. Pitts Creek is listed in DEQ's 305(b) report as impaired for open-water aquatic life use due to failure to meet dissolved oxygen criteria during summer months and for fish consumption use due to PCB in fish tissue. The Pokomoke River is listed as impaired for enterococcus, dissolved oxygen, fecal coliform, and PCB in fish tissue. Internal nutrient recycling, loss of riparian habitat, and natural sources are listed among the potential sources of the impairment.
4. Part I.A.1.a of the Permit requires KmX to perform and document quarterly visual examinations of the quality of the storm water discharging from the Facility's outfalls.
5. Part I.A.2.b and Part IV of the Permit requires KmX to sample stormwater discharge at least 72 hours after a preceding measurable rain event.
6. During a DEQ Facility inspection on February 10, 2016, DEQ staff documented the following compliance deficiencies with respect to the monitoring requirements of the Permit:
  - a. The quarterly visual examinations of storm water quality required by Part I.A.1.a of the Permit for the 2014 and 2015 reporting periods had not been performed.
  - b. The sampling of storm water discharge at least 72 hours after a preceding measurable rain event required by Part I.A.2.b of the Permit had not been performed.
7. KmX violated conditions Part I.A.1.a and Part I.A.2.b of the Permit as noted in paragraph C(6) of this Order.
8. KmX is required to develop and implement a Facility SWPPP according to requirements outlined in Part III of the Permit.
9. Part III.E of the Permit requires that the CSCE be available for review.
10. Part III.F.1 of the Permit requires that the Facility SWPPP be reviewed and signed.
11. During the DEQ Facility inspection on February 10, 2016, DEQ staff documented compliance deficiencies with respect to the SWPPP requirements of the Permit, including the following:
  - a. The annual CSCE was not available for review onsite as required by Part III.E of the Permit.
  - b. The Facility SWPPP had not been reviewed and signed as required by Part III.F.1 of the Permit.

12. Based on the results of the February 10, 2016, inspection, the Board concludes that KmX has violated conditions Part III.E and Part III.F.1 of the Permit as noted in paragraph C(11) of this Order.
13. On March 15, 2016, KmX self-reported an unauthorized discharge of washwater to stormwater Outfall 002 (IR No. 2016-T-2753). The discharge occurred on March 11, 2016 when KmX flushed washwater through a system to detect potential leaks, which then discharged to Outfall 002. KmX reported that the quantity of discharge was between 350 and 500 gallons.
14. TRO issued NOV No. W2016-03-T-0002 dated March 31, 2016 for the violations noted above.
15. On April 12, 2016, KmX responded to the NOV by submitting a plan and schedule of corrective action to address the violations.
16. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances
17. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
18. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
19. The Department has issued coverage under no permits or certificates to KmX other than under the Permit.
20. The unnamed tributary of Pitts Creek and the Pokomoke River are surface waters located wholly within the Commonwealth and are a “state waters” under State Water Control Law.
21. Based on the results of the February 10, 2016 inspection, the self-reported discharge on March 15, 2016, and the documentation submitted on April 12, 2016, the Board concludes that KmX has violated the Permit, as described in paragraphs C(6), C(11), and C(13) above.
22. KmX has submitted documentation that verifies that the violations as described in paragraphs C(6), C(11), and C(13) above, have been corrected.

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

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders KmX, and KmX agrees to pay a civil charge of \$9,750.00 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

KmX shall include its Federal Employer Identification Number (FEIN) 32-0123702 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, KmX 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 KmX for good cause shown by KmX, 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. W2016-03-T-0002 dated March 31, 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, KmX admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. KmX 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. KmX declares it has received fair and due process under the Administrative Process Act and the State Water 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 KmX 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.

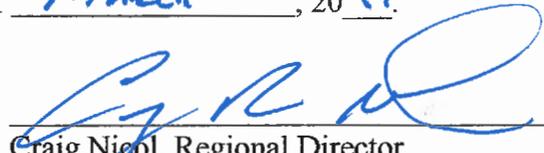
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
  8. KmX shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, 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. KmX shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. KmX 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 KmX. Nevertheless, KmX 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 KmX has completed all of the requirements of the Order;
    - b. KmX 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 KmX.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve KmX 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 KmX 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 KmX certifies that he or she is a responsible official to enter into the terms and conditions of this Order and to execute and legally bind KmX to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of KmX.
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, KmX voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23 day of March, 20 17.

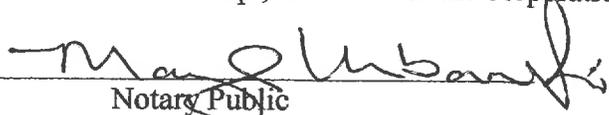
  
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Craig Nicol, Regional Director  
Department of Environmental Quality

KmX Chemical Corp. voluntarily agrees to the issuance of this Order.

Date: 1-17-17 By: CJ Walston, President  
Carol Walston (Person) (Title)  
KmX Chemical Corp.

Commonwealth of Virginia  
City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this 17 day of January, 2017, by Carol J Walston who is President of KmX Chemical Corp., on behalf of the corporation.

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

\_\_\_\_\_  
Registration No.

My commission expires:

Notary seal:

<p><b>MARY L. URBANSKI</b> Notary Public Wicomico County Maryland My Commission Expires June 7, 2017</p>
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