



# **COMMONWEALTH of VIRGINIA**

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

PIEDMONT REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Michael P. Murphy  
Regional Director

### **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO LIPHART STEEL COMPANY, INC. Registration Number 51012**

#### **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 Liphart Steel Company, Inc., 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 Liphart Steel Company, Inc., a structural steel fabrication and coating facility, located at 3308 Rosedale Avenue, Richmond, Virginia.
5. “FCE” means a full compliance evaluation by DEQ staff.
6. “Liphart Steel” means Liphart Steel Company, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Liphart Steel 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. “Permit” means a New Source Review (NSR) Permit, Registration No. 51012, to construct and operate a structural steel fabrication and spray coating Facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Liphart Steel on August 26, 2003.
10. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” mean 9 VAC 5 chapters 10 through 80.
12. “Va. Code” means the Code of Virginia (1950), as amended.
13. “VAC” means the Virginia Administrative Code.
14. “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. Liphart Steel owns and operates the Facility in Richmond, Virginia. The Facility fabricates steel structures and spray paints the steel pieces with paint primer. There is the potential to emit Volatile Organic Compounds (VOCs) with spray coating operations.
2. DEQ issued a New Source Review (NSR) Permit, Registration No. 51012, to Liphart Steel on August 26, 2003.
3. On April 23, 2014, Department staff conducted a FCE of the Facility. Based on the FCE, the Permit and Facility records, Department staff made the following observation:

- a) Liphart Steel was using a Graco Ultra Max II 490 Electric Airless Paint Sprayer rated at 0.21 gallons per minute at 2,000 psi instead of using the Falcon 20:1 air assisted sprayer rated at 2.5 gallons per hour, which is listed in the Facility's Permit.
4. Condition No. 1 of the Permit states that, "Except as specified in the Permit, the permitted facility is to be constructed and operated as represented in the permit application dated June 3, 2003 and received on June 4, 2003. 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 a permit prior to construction may result in enforcement action." (9 VAC 5-50-390 and 9 VAC 5-80-1210 D)
  5. Condition No. 2 of the Permit describes the permitted equipment the Facility as follows:
    - a) Safety Kleen parts washer (Ref # PW1) with a capacity of 26 gal, using 105 solvent
    - b) Safety Kleen parts washer (Ref # PW2) with a capacity of 10 gal, using 105 solvent
    - c) Falcon 20:1 air assisted sprayer (Ref # Sprayer) rated at 2.5 gal/hr
  6. Regulation 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. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit.
  7. On April 23, 2014, Department staff sent an email to Liphart Steel and recommended that they submit a new air permit application due to the change in the equipment at the Facility.
  8. On May 9, 2014, the Department issued Notice of Violation No. APRO8914, for the violation as described above.
  9. On May 19, 2014, Department staff met with Liphart Steel representatives to discuss the violation, including the corrective actions the company had taken.
  10. Based on the results of the April 23, 2014 FCE, records review, and May 19, 2014 meeting with representatives of the Facility, the Board concludes that Liphart Steel violated Condition No. 1 and 2 of the Permit, and 9 VAC 5-80-1120(A), as described in Section C, above.
  11. Liphart Steel has completed the corrective actions by apply for a Permit on June 3, 2014, and was issued an amended NSR Permit on June 30, 2014, to reflect a change in the paint spray equipment. Liphart Steel has made the corrective actions that demonstrate the violations described in Section C above, have been addressed.

**SECTION D: Agreement and Order**

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

1. Pay a civil charge of \$ 4,660 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", delivered to:

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

Liphart 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).

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Liphart Steel, for good cause shown by Liphart 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. 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, Liphart Steel admits the jurisdictional allegations, the findings of fact, and conclusions of law in this Order.
4. Liphart 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. Liphart Steel declares it has received fair and due process under the Administrative Process Act and 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 Liphart 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. Liphart 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. Liphart Steel shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Liphart 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 Liphart Steel. Nevertheless, Liphart 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 Liphart Steel has completed all of the requirements of the Order; or
  - b. Liphart 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 Liphart Steel.

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

And it is so ORDERED this 22<sup>ND</sup> day of SEPTEMBER, 2014.

  
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Michael P. Murphy, Regional Director  
Department of Environmental Quality

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

Date: 9/10/14 By: Mark A. Teachey, VP/General Manager  
(Person) (Title)  
Liphart Steel Company, Inc.

State of Virginia  
City/County of Richmond

The foregoing document was signed and acknowledged before me this 10<sup>th</sup> day of  
September, 2014, by Mark A. Teachey, who is  
(name)  
VP/General Manager  
of Liphart Steel Company, Inc., on behalf of the company.

Aimee J. Ligon  
Notary Public

7026388  
Registration No.

My commission expires: 8/31/14

Notary seal:

