



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MAXXIM REBUILD COMPANY, LLC

Registration No. 11535

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 Maxxim Rebuild Company, LLC, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings 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 Maxxim Rebuild Company, LLC, facility located at 5457 Industrial Park Rd, in Wise, Wise County, Virginia, which is permitted to operate a paint spray booth facility.

5. "Maxxim Rebuild Company, LLC" means Maxxim Rebuild Company, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Maxxim Rebuild Company, LLC 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. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Permit" means the minor New Source Review permit to modify and operate a paint spray booth facility which was issued under the Virginia Air Pollution Control Law and the Regulations to Maxxim Rebuild Company, LLC on January 8, 2007.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution", means 9 VAC 5 chapters 10 through 80.
11. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
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 Facts and Conclusions of Law

1. Maxxim Rebuild Company, LLC owns and operates the Facility in Wise County, Virginia. The Facility is the subject of the Permit which allows the company to operate a paint spray booth.
2. On March 10, 2016, the Facility submitted a permit modification request for the addition of additional coatings and an increase in product to the spray booth.
3. On May 19, 2016, DEQ staff conducted a PCE during which review of the 2015 annual update demonstrated the Facility used 235.5 gallons of coatings. Additionally, information submitted by the Facility in response to the April 4, 2016 request for additional information by DEQ-SWRO permitting demonstrated

the Facility operated unpermitted spray equipment and used non-equivalent coatings.

4. Condition No. 1 of the Permit states, "...Equipment to be Constructed...PSI Dry Filter Enclosed Model C/F 20x16x60-FLO spray booth and a Hawk H827W Series HVLP spray gun 3 gal/hr (rated capacity)..."
5. Condition No. 4 of the Permit states, "The PSI Dry Filter spray booth shall consume no more than a combined total of 200 gallons per year of Valspar Corporation product AHY0011, Martin Senour Paints product 53-8485, and Valspar Corporation product KPY0023, or equivalents..."
6. 9 VAC 5-80-1180 requires that, "...C. Minor NSR permits may contain emissions standards as necessary to implement the provisions of this article and 9VAC5-50-260. The following criteria apply in establishing emission standards to the extent necessary to assure that emission levels are enforceable as a practical matter:...3. The standard may prescribe, as an alternative to or a supplement to a limit prescribed under subdivision 1 of this subsection, equipment, work practice, fuels specification, process materials, maintenance, or operation standards, or any combination of them..."
7. Condition No. 5 of the Permit states, "Emissions from the operation of the PDI Dry Filter Enclosed spray booth shall not exceed the limits specified below:

VOC 17.88 lbs/hr 0.6 tons/yr

...Compliance with these emission limits may be determined as stated in Condition number 4."
8. 9 VAC 5-50-260 requires that, "No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of emissions limitations representing best available control technology, as reflected in any term or condition that may be placed upon the minor NSR permit approval for the facility..."
9. 9 VAC 5-170-160(A) states: "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."
10. Va. Code § 10.1-1322(A) gives the Department the authority to issue, amend,

revoke or terminate and reissue permits, and failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.

11. On May 23, 2016, based on the results of the May 19, 2016 PCE, the Department issued a Notice of Violation No. ASWRO000416 to Maxxim Rebuild Company, LLC for the alleged violations described in paragraph C(3) above.
12. On May 27, 2016, Maxxim Rebuild Company, LLC contacted DEQ staff electronically in response to the NOV.
13. On June 3, 2016, Department staff met with representatives of Maxxim Rebuild Company, LLC to discuss the alleged violations.
14. Based on the results of the May 19, 2016 PCE and the June 3, 2016 meeting, the Board concludes that Maxxim Rebuild Company, LLC has violated Permit Conditions 1, 4, 5 and 9 VAC 5-50-260 and 9 VAC 5-80-1180 as described in paragraph C(3).

SECTION D: Agreement and Order

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

1. Pay a civil charge of \$6,567 within 30 days of the effective date of the Order in settlement of the violation 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

Maxxim Rebuild Company, LLC shall include its Federal 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, Maxxim Rebuild Company, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Maxxim Rebuild Company, LLC for good cause shown by Maxxim Rebuild Company, LLC, 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 only those violations specifically identified in Section C of this Order and NOV No.ASWRO000416 dated May 23, 2016. 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 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, Maxxim Rebuild Company, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Maxxim Rebuild Company, LLC 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. Maxxim Rebuild Company, LLC 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 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 modify, rewrite, amend, or enforce this Order.
6. Failure by Maxxim Rebuild Company, LLC 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. Maxxim Rebuild Company, LLC 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. Maxxim Rebuild Company, LLC shall demonstrate

that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Maxxim Rebuild Company, LLC shall notify 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 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 Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition listed above, which the parties 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.

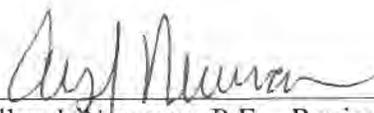
9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Maxxim Rebuild Company, LLC. Nevertheless, Maxxim Rebuild Company, LLC agrees to be 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 Maxxim Rebuild Company, LLC has completed all of the requirements of the Order.
 - b. Maxxim Rebuild Company, LLC 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 Maxxim Rebuild Company, LLC.

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

And it is ORDERED this 17th day of October, 2016



Allen J. Newman, P.E. - Regional Director
Department of Environmental Quality

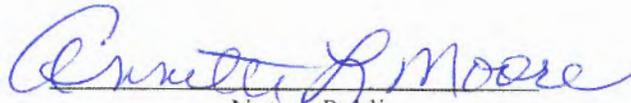
Maxxim Rebuild Company, LLC voluntarily agrees to the issuance of this Order.

Date: 10/13/16 By: 
Andrew B. McCallister
Vice President
Maxxim Rebuild Company, LLC

State of West Virginia

City/County of Boone

The foregoing document was signed and acknowledged before me this 13th day of October, 2016 by Andrew B. McCallister who is Vice President & Secretary of Maxxim Rebuild Company, LLC, on behalf of the corporation.


Notary Public

Registration No.

My commission expires: March 23, 2017

Notary Seal:

