



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

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Regional Director

## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO SUMITOMO MACHINERY CORPORATION OF AMERICA Registration No. 61066

### 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 SUMITOMO MACHINERY CORPORATION OF AMERICA 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.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means Sumitomo's metal parts and products coating machinery manufacturing facility located at 4200 Holland Boulevard in Chesapeake, 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 the Stationary Source Permit to Operate issued to Sumitomo on January 5, 2011 to operate the Facility under DEQ Air Registration No. 61066.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 through 80.
10. "Sumitomo" means SUMITOMO MACHINERY CORPORATION OF AMERICA, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Sumitomo is a "person" within the meaning of Va. Code § 10.1-1300.
11. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, 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 Fact and Conclusions of Law**

1. Sumitomo owns and operates the Facility located at 4200 Holland Boulevard in Chesapeake, Virginia. The Facility was subject to the Permit, which has since been significantly amended and reissued. The Permit authorized Sumitomo to operate a blasting booth and cutting machine for metal parts and machinery manufacturing in accordance with certain conditions.
2. On April 12, 2016, Department staff conducted a full compliance evaluation at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law and the Regulations. During the inspection, DEQ staff observed that:
  - a. Sumitomo had commenced operation of two emissions units that vented process exhaust to the outside. The Goff 48TB-CS Shot Blast Cleaner blasting booth was listed in the Permit as exempt because it vented process exhaust to the building's interior. Sumitomo had relocated and commenced operation of the Goff 48TB-CS Shot Blast Cleaner blasting booth such that the process exhaust stack now vented to the outside environment.
  - b. At some time between issuance of the Permit and the April 2016 inspection, Sumitomo had commenced operation of a Hypertherm Accu-cut 400XD Plasma Cutter such that the process exhaust stack vented to the outside environment.

- c. Sumitomo had not notified DEQ of the modification to the Goff 48TB-CS Blast Cleaner blasting booth or the addition of the Hypertherm Accu-cut 400XD Plasma Cutter, both of which vent exhaust to the outside environment, including construction, anticipated date of initial startup, or actual date of initial startup.
3. Condition 1 of the Permit stated, “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.”
4. 9 VAC 5-80-1120(A) states, “No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source.”
5. 9 VAC 5-80-1210 (E) states, “Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article 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. 9 VAC 5-50-50(A) requires that any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the Board for the date of commencement of construction, initial startup, and actual date of startup.
7. On August 25, 2016, based on the April 12, 2016 inspection, DEQ issued a NOV to Sumitomo for the violations described in paragraph C(2), above.
8. Based on the results of the April 16, 2016 inspection, and the air permit application submitted on July 5, 2016, the Board concludes that Sumitomo has violated 9 VAC 5-80-1120(A), 9 VAC 5-80-1210(E), 9 VAC 5-50-50(A), and Condition 1 of the Permit, as described in paragraphs C(2) through C(6), above.
9. On September 27, 2016, DEQ issued to Sumitomo an amended Article 5 – State Operating Permit Stationary Source Permit to Operate that listed the Goff 48TB-CS Shot Blast Cleaner and the Hypertherm Accu-cut 400XD Plasma Cutter; therefore, the violations described in paragraph C(2) through C(6), above, have been corrected.

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

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and 1316, the Board orders Sumitomo and Sumitomo agrees to pay a civil charge of \$7,090.00 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

Sumitomo 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, Sumitomo 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 Sumitomo, for good cause shown by Sumitomo, 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 the purposes of this Order and subsequent actions with respect to this Order only, Sumitomo admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Sumitomo 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. Sumitomo declares it has received fair and due process under the Administrative Process Act, Va. Code 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 Sumitomo 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. Sumitomo 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 occurrence. Sumitomo shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Sumitomo 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 within 24 hours and in writing within three business days, of learning of any condition above, which Sumitomo intends to assert will result in the impossibility of compliance, shall constitute a 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 Sumitomo. Nevertheless, Sumitomo 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 Sumitomo has completed all of the requirements of the Order;
  - (b) Sumitomo 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 Sumitomo.

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

And it is so ORDERED this 18 day of November, 2016.

Marion D. Hill  
Regional Director  
Department of Environmental Quality

SUMITOMO MACHINERY CORPORATION OF AMERICA voluntarily agrees to the issuance of this Order.

Date: 11/11/2016 By: James A. [Signature], V.P. Business Operations  
(Person) (Title)  
SUMITOMO MACHINERY CORPORATION OF AMERICA

**Commonwealth of Virginia**

City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 11 day of November, 2016, by James A. [Signature], who is

V.P. of Operations of SUMITOMO MACHINERY CORPORATION OF AMERICA on behalf of the SUMITOMO MACHINERY CORPORATION OF AMERICA.

Sheila S. Toney  
Notary Public

705 8566  
Registration No.

My commission expires: 12/31/2019  
Notary Seal:

