



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
VFP INC. / CONCRETE SHELTER DIVISION**

Registration No. 10581

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 VFP, Inc., 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 VFP, Inc. / Concrete Shelter Division, located at 540 Industrial Park Road, Duffield, Scott County, Virginia, which operates a concrete shelter manufacturing facility.

5. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
6. “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.
7. “PCE” means partial compliance evaluation by DEQ staff.
8. “Regulations” or “Regulations for the Control and Abatement of Air Pollution”, means 9 VAC 5 chapters 10 through 80.
9. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
10. “Va. Code” means the Code of Virginia (1950), as amended.
11. “VAC” means the Virginia Administrative Code.
12. “VFP, Inc.” means VFP, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. VFP, Inc. is a ‘person’ within the meaning of Va. Code § 10.1-1300.
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 Facts and Conclusions of Law

1. VFP, Inc. owns and operates the Facility in Scott County, Virginia. The Facility is a concrete shelter manufacturing facility.
2. On February 26, 2019, DEQ staff conducted a PCE of the Facility. During the PCE, DEQ staff noted paint spray operations were being conducted outside of the paint spray booth.
3. 9 VAC 5-80-1180 states, “...D. Minor NSR permits will contain, but need not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:...2. Conditions necessary to enforce emission standards. Conditions may include but not be limited to, any of the following:...d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment...”
4. 9 VAC 5-50-260 A. states, “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.”

5. On March 26, 2019, based on the February 26, 2019 PCE, the Department issued a Notice of Violation No. ASWRO001153 to VFP, Inc. for the alleged violation described in paragraph C(2) above.
6. On March 29, 2019, the Department received an electronic written response to the NOV from representatives of the Facility.
7. Based on the results of the February 26, 2019 PCE and the March 29, 2019 response, the Board concludes that VFP, Inc. has violated 9 VAC 5-80-1180 and 9 VAC 5-50-260 A. as described in paragraph C(2) through C(4).

SECTION D: Agreement and Order

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

Pay a civil charge of \$3,495 within 30 days of the effective date of the Order in settlement of the violation cited in this Order.

Each 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

VFP, Inc. 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, VFP, Inc. 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 VFP, Inc. for good cause shown by VFP, Inc. , 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. ASWRO001153 dated March 26, 2019. 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, VFP, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. VFP, Inc. 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. VFP, Inc. 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 VFP, Inc. 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. VFP, Inc. 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. VFP, Inc. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. VFP, Inc. 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 VFP, Inc. Nevertheless, VFP, Inc. 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 VFP, Inc. has completed all of the requirements of the Order.
 - b. VFP, Inc. 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 VFP, Inc..

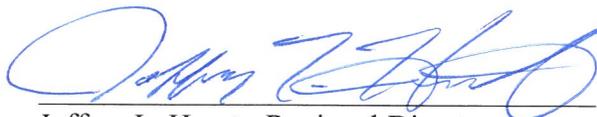
Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve VFP, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by VFP, Inc. 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 VFP, Inc. 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 VFP, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of VFP, Inc.

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, VFP, Inc. voluntarily agrees to the issuance of this Order.

And it is ORDERED this 17th day of June, 2019



Jeffrey L. Hurst - Regional Director
Department of Environmental Quality

VFP, Inc. voluntarily agrees to the issuance of this Order.

Date: 4-17-19 By: Deborah Eades
Deborah Eades, MBA, Human Resource Manager
VFP, Inc.

Commonwealth of Virginia

City/County of Washington

The foregoing document was signed and acknowledged before me this 17th day of
June, 2019 by Deborah Eades who is
HR Manager of VFP, Inc., on behalf of
the company.

Mary Beth Weddle
Notary Public

7788212
Registration No.

My commission expires: 6-30-22

Notary Seal:

