



# COMMONWEALTH of VIRGINIA

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DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOUTHWEST REGIONAL OFFICE  
355-A Deadmore Street, Abingdon, Virginia 24210  
Phone (276) 676-4800 Fax (276) 676-4899  
www.deq.virginia.gov

Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

Jeffrey Hurst  
Regional Director

## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO SAMUEL, SON & CO. (USA) INC.

**Registration No. 11745**

### **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 Samuel, Son & Co. (USA) Inc. f/k/a Steel Fab – A Division of Samuel Pressure Vessel Group (SPVG), 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 metal storage tank manufacturing facility located at 58 Samuel Way, Lebanon, Russell County, Virginia.

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 a partial compliance evaluation by DEQ staff.
8. "Permit" means the minor New Source Review permit to modify and operate a metal storage tank manufacturing facility which was issued under the Virginia Air Pollution Control Law and Regulations to Steel Fab – SPVG on December 13, 2013.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution", means 9 VAC 5 chapters 10 through 80.
10. "Samuel" means Samuel, Son & Co. (USA), Inc., f/k/a Steel Fab – Division of Samuel Pressure Vessel Group (SPVG), a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Samuel is a "person" within the meaning of Va. Code § 10.1-1300.
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. Samuel owns and operates the Facility in Russell County, Virginia. Samuel manufactures metal storage tanks.
2. On November 6, 2017, DEQ staff conducted a PCE of the Facility. During the PCE, DEQ staff observed a paint spray booth, a plasma cutter, a powder paint booth with gas-fired drying ovens, and welding and metal cutting units had been installed without a permit. Additionally, the Facility was using non-equivalent coatings and thinners in the spray booths and had failed to maintain records of monthly toxic compound emission data.
3. Condition No. 9 of the Permit states, "The total throughput of materials to the

spray booths shall not exceed the following quantities of coatings and solvents, or their equivalents...”

4. Conditions No. 10 and 25 of the Permit state, “...Exceedance of the operating limits may be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Condition 9.”
5. Condition No. 26 of the Permit states, “The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit...a. Annual emissions (in tons) of each toxic compound listed or subsequently approved under Condition 25...b. Monthly emissions calculations for each toxic compound from the spray booths using calculation methods approved by the Director, Southwest Regional Office to verify compliance with the ton/yr emissions limitations in Condition 25...”
6. 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...”
7. 9 VAC 5-60-50 requires that, “F. Upon request of the board, the owner of a hazardous air pollutant source subject to the provisions of this chapter shall provide notification and reports, revise reports, maintain records or report emission test or monitoring results in a manner and form and using procedures acceptable to the board.”
8. 9 VAC 5-60-320 requires that, “2. The owner of new or modified sources shall employ best available control technology as may be approved by the board for the control of toxic pollutants.”
9. 9 VAC 5-80-1120 (A) requires 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.”
10. 9 VAC 5-80-1110 (C) requires that, “Begin actual construction” means initiation of permanent physical on-site construction of an emissions unit...With respect to the initial location or relocation of a portable emissions unit, this term refers to the delivery of any portion of the portable emissions unit to the site.”
11. 9 VAC 5-80-1180 requires that, “A. No minor NSR permit will be granted unless it is shown to the satisfaction of the board that the source will comply with the

following standards: D.10. Other requirements as may be necessary to ensure compliance with the applicable regulations.”

12. 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.
13. On November 11, 2017, the Department received a permit application from the Facility.
14. On November 21, 2017, based on the November 6, 2017 PCE, the Department issued a Notice of Violation No. ASWRO000746 to Samuel for the violations described in paragraph C(2) above.
15. On November 28, 2017, the Department received a response by telephone to the NOV from Samuel.
16. On May 1, 2018, Department staff met with representatives of Samuel to discuss the alleged violations. Samuel submitted additional permit application documentation. On May 18, 2018 submitted documentation addressing the violations.
17. Based on the results of the November 6, 2017 PCE and the November 28, 2017 telephone response, the May 1, 2018 meeting and the May 18, 2018 documentation, the Board concludes that Samuel has violated Permit Conditions 9, 10, 25 and 26 and 9 VAC 5-50-260, 9 VAC 5-60-50, 9 VAC 5-60-320, 9 VAC 5-80-1120(A), and 9 VAC 5-80-1180 as described in paragraphs C(2) through C(11).

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

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

Pay a civil charge of \$19,101 within 30 days of the effective date of the Order in settlement of the alleged 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

Samuel 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, Samuel 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 Samuel for good cause shown by Samuel, 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.ASWRO000746 dated November 21, 2017. 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, Samuel neither admits nor denies the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Samuel 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. Samuel 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 Samuel 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. Samuel 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. Samuel shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Samuel 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 Samuel. Nevertheless, Samuel 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 Samuel has completed all of the requirements of the Order.
  - b. Samuel 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 Samuel.

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

And it is ORDERED this 8<sup>th</sup> day of June, 2018

  
Jeffrey L. Hurst - Regional Director  
Department of Environmental Quality

Samuel, Son & Co. (USA) Inc. voluntarily agrees to the issuance of this Order.

Date: 6/6/18 By: [Signature]  
Christos Linardakis, Director, Compliance  
Samuel, Son & Co. (USA) Inc.

Illinois

City/County of will

The foregoing document was signed and acknowledged before me this 6<sup>th</sup> day of June, 2018 by CHRISTOS LINARDAKIS who is DIRECTOR OF COMPLIANCE of Samuel, Son & Co. (USA) Inc., on behalf of the corporation.

[Signature]  
Notary Public

133557  
Registration No.

My commission expires: 6/25/2018

Notary Seal:

