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. FOR 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. regarding the VFP, Inc. – Concrete Shelter Division, 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 the VFP, Inc. – Concrete Shelter Division, located at 402 Industrial Park Road, Duffield, Scott 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 a New Source Review permit to modify and operate a concrete shelter manufacturing facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to VFP, Inc. on September 10, 2019.

9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.

10. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.

11. "Va. Code" means the Code of Virginia (1950), as amended.

12. "VAC" means the Virginia Administrative Code.

13. "VFP, Inc." or "VFP" means VFP, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. VFP, Inc. is a "person" within the meaning of Va. Code § 10.1-1300.

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. VFP owns and operates the Facility in Scott County, Virginia. The Facility is the subject of the Permit, which allows VFP to modify and operate a concrete shelter manufacturing facility.

2. On February 16, 2022, DEQ staff conducted a PCE at the Facility. During the PCE, DEQ staff noted that two new cement silos had been installed without a permit. The new cement silos had not yet been put into operation at the time of the PCE.

3. 9 VAC 5-80-1120(A) states: "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."

4. On March 4, 2022, VFP submitted a permit application for installation of the two new cement silos at the Facility.

5. On March 15, 2022, based on the results of the February 16, 2022 PCE, the Department issued Notice of Violation No. ASWRO002083 to VFP for the violation described in paragraph C(2), above.

6. Also on March 15, 2022, VFP submitted an electronic response to the NOV and indicated its intent to schedule a telephone call with DEQ staff to discuss the violation.

7. On March 18, 2022, VFP provided a telephone response to the NOV and indicated that the two new cement silos would not be put into operation until such time that permit coverage has been obtained.

8. Based on the results of the February 16, 2022 PCE, the March 15, 2022 electronic response, and the March 18, 2022 telephone call, the Board concludes that VFP has violated 9 VAC 5080-1120(A), as described in paragraphs C(2) and C(3), above.

9. On March 23, 2022, DEQ issued a New Source Review permit to VFP to construct and operate two new cement silos.

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 $3,648.83 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

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 this Order with the consent of VFP for good cause shown by VFP, 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 and in NOV No. ASWRO002083, dated March 15, 2022. 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, VFP admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. VFP 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 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 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 VFP 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 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 shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. VFP

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 VFP. Nevertheless, VFP 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 has completed all of the requirements of the Order;

    b. VFP 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.

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

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 voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 08 th day of April, 2022.

Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

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

Date: 04/07/2022 By _____, Director of Operations
(Person) (Title)
VFP, Inc.

Commonwealth of Virginia

City/County of Scott

The foregoing document was signed and acknowledged before me this 7th day of April, 2022, by Carl Phipps who is Director of Operations of VFP, Inc., on behalf of the corporation.

_____
Notary Public

7811970
Registration No.

My commission expires: 4/30/23

Notary seal:

JOSEPH W HAMMONDS
COMMONWEALTH OF VIRGINIA
REGISTRATION NO. 7811970
MY COMM. EXPIRES 04/30/2023
NOTARY PUBLIC