



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MILLER MILLING COMPANY, LLC FOR MILLER MILLING COMPANY Registration No. 81163

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 Miller Milling Company, LLC, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, the Permit and applicable 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 Miller Milling Company wheat flour mill and grain handling/storage facility located at 302 Park Center Drive in Winchester, VA.

5. "Miller" means Miller Milling Company, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Miller 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. "NSR" means the NSR permit which was issued under the Virginia Air Pollution Control Law and the Regulations to Miller on September 28, 2012.
8. "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.
9. "PCE" means Partial Compliance Evaluation conducted by DEQ staff.
10. "Permit" means the New Source Review Permit, which was issued under the Virginia Air Pollution Control Law and the Regulations to Miller on September 28, 2012.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 chapters 10 through 80.
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. Miller Milling Company (Miller) owns and operates a wheat flour mill and grain handling/storage facility (Facility) located at 302 Park Center Drive in Winchester, VA. The Facility is subject to a Permit dated September 28, 2012.
2. On July 16, 2014, DEQ staff conducted an on-site PCE of the Facility and observed that construction of new wheat receiving silos and wheat handling systems had commenced.
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. 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.”

5. On September 15, 2014 DEQ, based on the July 16, 2014 PCE, DEQ issued Notice of Violation (NOV) No. AVRO9034 to Miller.
6. On September 17, 2014, Miller responded to the NOV by telephone and email. They stated that they began the silo construction on March 18, 2014. The three filter bag houses were installed in late June 2014. Miller was under the impression that the notification section in their existing permit applied to the installation of any new equipment and actually thought they were notifying DEQ earlier than required. The equipment has not been completed nor has it been operated.
7. On June 2, 2014, DEQ received a permit application for the new silos and on September 19, 2014, the application was deemed complete.
8. On September 26, 2014, the NSR permit for the grain handling facility became effective.
9. Based on the results of July 16, 2014 PCE, the Board concludes that Miller has violated 9 VAC 5-80-1120(A) as described in paragraphs C(2) through C(5) above.

SECTION D: Agreement and Order

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

1. Pay a civil charge of **\$3,918.00** 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

Miller shall include its Federal Employer Identification Number (41-153-9050) 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Miller for good

cause shown by Miller, 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 purposes of this Order and subsequent actions with respect to this Order only, Miller admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Miller consents to venue in the Circuit Court of the City of Richmond, Virginia for any civil action taken to enforce the terms of this Order.
5. Miller 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 Miller 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. Miller 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. Miller shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Miller 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 Miller intends 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, 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 Miller. Nevertheless, Miller 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 Miller has completed all of the requirements of the Order;
 - b. Miller 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 Miller.

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

And it is so ORDERED this 5th day of November, 2014



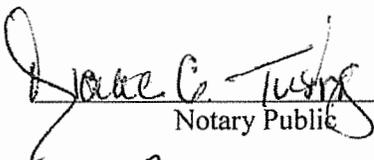
Amy T. Owens, Regional Director
Department of Environmental Quality

Miller Milling Company, L.L.C voluntarily agrees to the issuance of this Order.

Date: 11/3/14 By: Steve Adams, PLANT MANAGER
Steve Adams Title
Miller Milling Company, LLC

Commonwealth of Virginia
City/County of Frederick

The foregoing document was signed and acknowledged before me this 3rd day of November, 2014, by Steve Adams who is Plant Mgr. of Miller Milling Company, LLC, on behalf of Miller Milling Company, LLC.



Notary Public

262816

Registration No.

My commission expires: 9-30-2018

Notary seal:

