



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN VIRGINIA REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Jeffery A. Steers
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION

ORDER BY CONSENT

ISSUED TO

APAC-ATLANTIC, INC. – VIRGINIA DIVISION

Registration No. 40730

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1309 and 10.1-1316 between the State Air Pollution Control Board and APAC-Atlantic, Inc. – Virginia Division, for the purpose of resolving certain alleged violations of environmental laws and regulations and to provide for the payment of civil charges.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.
3. “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.
5. “Order” means this document, also known as a Consent Order.
6. “APAC”, means APAC-Atlantic, Inc. – Virginia Division certified to do business in Virginia and

its affiliates, partners, subsidiaries, and parents.

7. “Facility” means the APAC-Atlantic, Inc. – Virginia Division site located at 109 Wyche Road, Stafford County, Virginia.
8. “Regulation” means 9 VAC 5-10-10 et seq., the Regulations for the Control and Abatement of Air Pollution.
9. “FSO” means the Fredericksburg Satellite Office of DEQ, located in Fredericksburg, Virginia.

SECTION C: Finding of Facts and Conclusions of Law

1. APAC operates the Facility on an as needed basis to produce and offer for sale a hot asphalt mix. The Facility is the subject of a Stationary Source permit issued by DEQ on December 18, 2002 (“Permit”).
2. On January 9, 2006, DEQ FSO staff conducted a compliance inspection at the Facility. Upon arriving, staff observed fugitive emissions coming from multiple points around the mixer. Individual readings of the emissions were observed to be approximately 25% opacity.
3. The mixer housing where the emissions were observed contains two sections (top and bottom) that are sealed together by a rubber gasket. Staff observed several tears and missing sections of the gasket from where fugitive emissions were observed being emitted.
4. During the inspection, APAC’s foreman at the Facility stated that he had turned off the bag house fan because aggregate was moving slowly through the mixer onto the conveyors. The bag house and bag house fan are the primary pollution control devices for particulate emissions at the Facility. The foreman asserted that due to a clog the aggregate was moving slowly through the mixer and cooling too quickly causing a flow problem in the hot bins. He stated that he turned the bag house fan off to reduce the cooling rate and remedy the flow problem. APAC asserts that a malfunction occurred and observations made by DEQ staff were not particulate matter emissions from the operation of the Facility.
5. DEQ staff asked the foreman to turn the bag house fan back on to determine what effect, if any, it would have on the fugitive emissions that were being observed. Once the bag house fan was back in operation, DEQ observed that fugitive emissions from the noted emission points were eliminated.
6. Furthermore, the inspection revealed that APAC did not have a wet suppression system in place at the Facility as required by the Permit. The foreman explained that the sprinkler system and the associated water hoses were removed from the Facility during the fall of 2005. APAC has agreed to assign a water truck to be permanently located at the Facility to resolve the wet suppression system issue. Finally, a review of the office files indicated that APAC has not

maintained the required operation manuals, training records, fuel supplier certifications, and maintenance records.

7. The Board has evidence to indicate that APAC has violated the Permit by: (1) operating the Facility while the fabric filter (“bag house”) fan was not in operation in violation of Permit Condition No. 3; (2) failing to maintain systems to control fugitive dust emissions pursuant to Permit Condition No. 5; (3) failing to maintain fuel supplier certification records pursuant to Permit Condition No. 14; (4) failing to develop and maintain a maintenance schedule pursuant to Permit Condition No. 20(a); (5) failing to maintain written operation procedures for the Facility’s equipment pursuant to Permit Condition No. 20(c); and (6) failing to maintain training records pursuant to Permit Condition No. 20(d). DEQ issued one Notice of Violation (NOV) to APAC on February 10, 2006 for the above-referenced violations.
8. To address the clogging issue that resulted in the bag house being voluntarily turned off, APAC replaced the old pug mill mixer and its associated equipment with a new continuous feed twin-screw mixer. According to APAC it began construction on the new mixer March 10, 2006 and the mixer was first used on April 6, 2006. A review of DEQ FSO’s files for the Facility revealed that a permit was not issued for the construction or operation of the new mixer. Moreover, APAC did not provide the required written notification of the construction commencement date or start-up date for the new mixer.
9. Subsequently, on May 4, 2006, DEQ received a completed Form 7 (Air Permit Application) for the construction and operation of the new asphalt mixer. As of this date, DEQ is processing an air permit for the new mixer.
10. The Board has evidence to indicate that APAC has violated the Regulation by: (1) failing to obtain a permit prior to construction and operation of the new mixer pursuant to 9 VAC 5-80-1120; and (2) failing to provide written notification of the construction commencement date and startup date for the new mixer pursuant to 9 VAC 5-50-50. DEQ issued one NOV to APAC on October 13, 2006 for the above-referenced violations.
11. Appendix A of this Order requires APAC to submit an Operations and Maintenance (O&M) Manual for the Facility to address the remaining issues of Permit noncompliance.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 10.1-1316(C), orders APAC and APAC voluntarily agrees that:

1. APAC shall perform the actions described in Appendix A of this Consent Order to remedy the violations described above.
2. APAC shall pay a civil charge of \$17,800 within 30 days of the effective date of the Consent Order

in settlement of the alleged violations cited in this Consent Order. Payment shall be made by check payable to the “Treasurer of Virginia”, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Either in the transmittal letter or as a notation on the check, APAC shall indicate that this payment is submitted pursuant to this Consent Order and shall include the Federal Identification Number for APAC.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of APAC, for good cause shown by APAC, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein and listed above in Section C-2. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, APAC admits the jurisdictional allegations, but neither admits nor denies the factual findings and conclusions of law contained herein.
4. APAC 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. APAC declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State 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 enforce this Order.
6. Failure by APAC 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. APAC 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. APAC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. APAC shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order.
 - a. Such notice shall set forth:
 - b. the reasons for the delay or noncompliance;
 - c. the projected duration of any such delay or noncompliance;
 - d. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - e. the timetable by which such measures will be implemented and the date full compliance will be achieved.

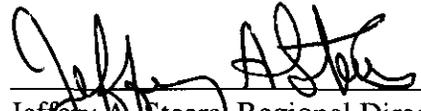
Failure to so notify the Regional Director within twenty-four (24) hours of learning of any condition above, which APAC intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. Any plans, reports, schedules, permits, or specification attached hereto or submitted by APAC 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.
11. This Order shall become effective upon execution by both the Director or his designee and APAC. Notwithstanding the foregoing, APAC agrees to be bound by any compliance date, which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to APAC. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve APAC from his obligation to

comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. By its signature below, APAC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of DECEMBER 6, 2006.



Jeffery A. Steers, Regional Director
Department of Environmental Quality
Northern Virginia Regional Office

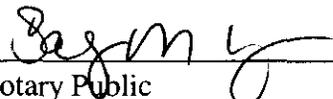
APAC-Atlantic, Inc. – Virginia Division voluntarily agrees to the issuance of this Order.

By: 

Wade House, Division President
APAC-Atlantic, Inc. – Virginia Division
Date: DEC. 1, 2006

Commonwealth of Virginia
City/County of Prince William

The foregoing document was signed and acknowledged before me this 1ST day of December, 2006, by Wade House, who is Division President of APAC-Atlantic, Inc. – Virginia Division, on behalf of APAC-Atlantic, Inc. – Virginia Division.



Notary Public

My commission expires: 3/31/2010.

APPENDIX A
SCHEDULE OF COMPLIANCE

APAC shall:

1. By no later than December 1, 2006, submit to DEQ for review and approval, an Operations and Maintenance (O&M) Manual for the Facility. This manual shall include, but not be limited to, the following items:
 - a. Facility design and operational procedures;
 - b. Routine preventative maintenance schedule for the operational units and critical spare parts inventory; and
 - c. Environmental document control and record keeping pursuant to the Permit, including, but not limited to, fuel supplier certifications and employee training records.