



# *COMMONWEALTH of VIRGINIA*

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Blue Ridge Regional Office

[www.deq.virginia.gov](http://www.deq.virginia.gov)

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## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ADAMS CONSTRUCTION COMPANY FOR MECKLENBURG ASPHALT PLANT Registration No. 21549

### **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 Adams Construction Company, regarding the Mecklenburg Asphalt Plant, 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. "Adams" means Adams Construction Company, a company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Adams is a "person" within the meaning of Va. Code § 62.1-44.3.
2. "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.
3. "BRRO-R" means the Blue Ridge Regional Office of DEQ, located in Lynchburg, Virginia.
4. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Facility" or "Plant" means the Adams Construction Company – Mecklenburg Asphalt Plant, located at 1395 Skyline Road in Mecklenburg County, Virginia.
8. "FCE" means a full compliance evaluation by DEQ staff.
9. "MACT ZZZZ" means Maximum Achievable Control Technology, 40 CFR Part 63, Subpart ZZZZ – National Emission Standards for Stationary Reciprocating Internal Combustion Engines.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
11. "NSPS, Subpart I" means New Source Performance Standards, 40 CFR Part 60, Subpart I - Standards of Performance for Hot Mix Asphalt Facilities.
12. "NSPS, Subpart IIII" means New Source Performance Standards, 40 CFR Part 60, Subpart IIII - Standards of Performance for Stationary Compression Ignition Internal Combustion Engines.
13. "NSPS, Subpart OOO" means New Source Performance Standards, 40 CFR Part 60, Subpart OOO – Standards of Performance for Nonmetallic Mineral Processing Plants.
14. "Order" means this document, also known as an "Order by Consent" or "Consent Order", a type of Special Order under the Virginia Air Pollution Control Law.
15. "Permit" means the Stationary Source Permit to Relocate and Operate an existing batch mixed asphalt plant facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Adams on December 8, 2011.
16. "Portable plant" means any nonmetallic mineral processing plant that is mounted on any chassis or skids and may be moved by the application of a lifting or pulling force.
17. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
18. "Stationary source" means a place or object from which pollutants are released and which does not move around.
19. "Va. Code" means the Code of Virginia (1950), as amended.

20. "VAC" means the Virginia Administrative Code.
21. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (see 40 CFR 60, Appendix A).
22. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
23. "VOC" means Volatile Organic Compounds.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Adams Construction Company ("Adams") owns and operates the Facility. The Facility produces various asphalt mixes utilized in road construction.
2. The Department issued the Permit to Adams on December 8, 2011 for the Facility under Registration No. 21549, which allows operation and emissions in strict accordance with its terms.
3. The Permit includes designated equipment subject to New Source Performance Standards ("NSPS") Subparts I, III and OOO, as well as Maximum Achievable Control Technology ("MACT") Subpart ZZZZ.
4. On May 22, 2013, DEQ staff conducted a Full Compliance Evaluation ("FCE") at the Facility. The Facility was permitted for an Eagle UltraMax<sup>®</sup> Model 1200-25CC Crushing and Screening Plant, which included a 48" x 34" impact crusher ("Crusher"). During the inspection DEQ staff did not observe the Crusher onsite and a Facility representative related that the Crusher was being used at a different location. The Crusher is not permitted as a portable plant.
5. 9 VAC 5-80-1120 B. states, *inter alia*, no owner or other person shall relocate any stationary source or emissions unit from one stationary source to another without first obtaining from the board a permit to relocate the source or unit.
6. The Crusher, conveyors and screen units are subject to the provisions of NSPS, Subpart OOO. The Permit, under Condition #30, requires Visible Emission Evaluations ("VEE") be conducted in accordance with 40 CFR Part 60, Appendix A, Method 9, and reported to the Department no later than 180 days after startup of the Facility. Facility personnel were unable to produce documentation of VEE conducted for the designated equipment.
7. 9 VAC 5-50-30 states, *inter alia*, performance tests for new or modified sources shall be conducted under conditions which the board shall specify to the owner based on representative performance of the source. The owner shall make available to the board such records as may be necessary to determine the conditions of the performance tests.

8. Particulate emissions from the rotary dryer, hot elevator and hot screen are controlled by a fabric filter. Permit Condition #6 requires the Facility to continuously measure the differential pressure drop across the filter and record the results in a log on a daily basis. Facility personnel were unable to produce documentation of the measurement of differential pressure drop during the inspection.
9. 9 VAC 5-50-50 D. states, *inter alia*, that any owner of a new or modified source subject to the provisions of this chapter shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this chapter recorded in a permanent form suitable for inspection.
10. Condition #3a. of the Permit requires control of fugitive dust and VOC emissions emanating from material handling, crushing, screening, cold aggregate belt conveyor transfers and storage bins by wet suppression or equivalent. It was observed during the inspection that the designated equipment was not fitted with a wet suppression system or equivalent approved by the Department.
11. NSPS Subpart OOO requires that a wet suppression system be installed and operating on the designated equipment.
12. Facility personnel were unable to produce documentation regarding the maintenance schedule or training records during the inspection.
13. Condition #36 a. of the Permit requires the Facility is to develop a maintenance schedule for all scheduled and non-scheduled maintenance activities.
14. Condition #36 d. of the Permit requires the Facility is to train operators in the proper operation of equipment and maintain records of the training provided. Records of maintenance and training shall be maintained on site for a period of five years and shall be made available to Department personnel upon request.
15. 9 VAC 5-50-20 E. provides, *inter alia*, determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.
16. 9 VAC 5-80-1180 D. provides, *inter alia*, 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: 8. Reporting or recordkeeping requirements, or both.

17. On July 9, 2013, based on observations made during the Full Compliance Evaluation conducted on May 22, 2013, the Department issued Notice of Violation No. AWCRO #8721 to Adams for the violations described in paragraphs C(4) through C(16), above.
18. On August 20, 2013, Department staff met with representatives of Adams to discuss the violations.
19. During the Permit application process, the Department requested additional documentation regarding the Crusher, which Adams submitted to the Department on October 24, October 26, and November 10, 2011 and the Permit application was deemed complete. At that time, particulate emissions from the Crusher's stone processing units, cold aggregate bins, and fugitive dust sources were calculated using Stone Processing emission factors from AP42 Section 11.19.2, Crushed Stone Processing dated 2004 and Stone Processing Plant Procedures. The manufacturer did not provide the maximum rated hourly capacity of the Crusher; however, similarly sized impact crushers are rated to be 300 tons/hr. Therefore, the Department determined the applicability of Subpart 000 based on the calculated maximum rated hourly capacity of the Crusher.
20. Based on the results of the August 20, 2013, meeting and a review of the documentation submitted during the Permit application process and the meeting, the Board concludes that Adams Construction Co. has violated the Synthetic Minor Permit Conditions #3a., #6, #7, #29 g. and h., #30 and #36a. and d., 9 VAC 5-50-20 E., 9 VAC 5-50-30, 9 VAC 5-50-50 D., 9 VAC 5-80-1120 B., 9 VAC 5-80-1180 D. and NSPS Subpart 000 as described in paragraphs C(5) through C(19), 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 Adams, and Adams agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$13,650 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

Adams shall include its Federal Employer Identification Number (FEIN) [(xx-xxxxxxx)] 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, Adams 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 Adams for good cause shown by Adams, 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, Adams admits the jurisdictional allegations, and agree not to contest, but neither admit nor deny the findings of fact, and conclusions of law in this Order.
4. Adams 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. Adams declares that they have received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and they waive 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 Adams 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. Adams 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. Adams shall demonstrate that such

circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Adams 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 Adams 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 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 Adams.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Adams has completed all of the requirements of the Order;
  - b. Adams 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 Adams.

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

And it is so ORDERED this 28<sup>th</sup> day of April, 2014.

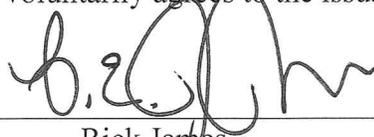


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Robert J. Weld, Regional Director  
Department of Environmental Quality

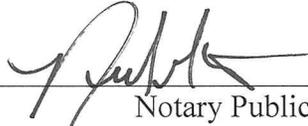
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Adams Construction Company voluntarily agrees to the issuance of this Order.

Date: 4-22-14 By: ,  
Rick James Executive Vice President  
Adams Construction Company

Commonwealth of Virginia  
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 22<sup>nd</sup> day of  
April, 2014, by Rick James who is  
Exec. Vice President of Adams Construction Company, on behalf of Adams.

  
Notary Public  
7515463  
Registration No.

My commission expires: 6/30/16

Notary seal:

