COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director

Steven A. Dietrich
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER BY CONSENT
ISSUED TO
ADAMS CONSTRUCTION COMPANY

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and Adams Construction Company, for the purpose of resolving certain violations of State Air Pollution Control Laws and regulations.

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 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. "Adams Construction Company" means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Facility" means the structure located at intersection of Route 460 and Route 805 in Blue Ridge, Virginia.

8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

9. "Permit" means the Stationary Source Permit to Construct and Operate, dated July 24, 2002.

10. "O&M" means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. Adams Construction Company owns and operates a facility in Blue Ridge, Virginia. This facility has a stationary source permit, which allows the operation of an asphalt batch plant facility.

2. On April 5, 2005, DEQ staff conducted a surveillance inspection at the Adams Construction Company facility. Based on observations made during this inspection, DEQ alleges that Adams Construction Company has exceeded their 20% opacity limit listed in the permit, Condition 12.

3. During the April 5, 2005 surveillance inspection WCRO staff inquired as to whether the facility was experiencing any process or control equipment problems that could create increased opacity and the batch plant operator said he was not aware of any problems. Following the conversation with the batch plant operator, USEPA Method 9 visible emission evaluations were conducted by WCRO staff. WCRO staff recorded six minute opacity averages of 33.96%, 36.04% and 33.12% respectively.

4. On April 15, 2005, DEQ issued a Notice of Violation to Adams Construction Company for alleged violations of the Virginia Air Pollution Control Board Laws and Regulations and Specific Condition 12 of the permit. The observations above are also cited under the following regulation, 9 VAC 5-40-1230 Regulations for the Control and Abatement of Air Pollution that places the 20% opacity limit on Asphalt Plants.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, orders Adams Construction Company, and Adams Construction Company agrees to pay a civil charge of **$4,567.50** in settlement of the violations cited in this Order.

1. **$4,567.50** of this civil charge shall be paid within 30 days of the effective date of 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 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Adams Construction Company, for good cause shown by Adams Construction Company, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including those matters alleged in the Notice of Violation issued to Adams Construction Company by DEQ on April 15, 2005. 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, Adams Construction Company admits the jurisdictional allegations, but does not admit the factual allegations or legal conclusions of law contained herein. DEQ and Adams Construction Company agree that the actions undertaken by Adams Construction Company in accordance with this Consent Order do not constitute an admission of liability by Adams Construction Company. Adams Construction Company does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the Findings of Facts and Conclusions of Law contained in Section C of this Order.

4. Adams Construction Company 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 Construction Company declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the 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 Adams Construction Company 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 Construction Company 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. Adams Construction Company shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Adams Construction Company 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. 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 within 24 hours 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, 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 Adams Construction Company.

11. 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 Adams

Construction Company. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Adams Construction Company from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signatures below, Adams Construction Company agree to the issuance of this Order.

And it is so ORDERED this 2nd day of JUNE, 2005.

Steven A. Dietrich
FOR Robert G. Burnley, Director
Department of Environmental Quality

Adams Construction Company agrees to the issuance of this Order.

By: R.E. Jr.

Date: 6-1-05

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 1st day of June, 2005, by Rick James, who is
(name)

Ex. Vice-President of Adams Construction Company, on behalf of the Corporation.
(title)

Teresa L Witten
Notary Public

My commission expires: 9/30/08.