



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO B.P. SHORT & SON PAVING CO., INC. FOR JACK PLANT Registration No. 50041

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 B.P. Short & Son Paving Co., Inc., regarding Jack 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. "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. "BP Short" means B.P. Short & Son Paving Co., Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. BP Short is a "person" within the meaning of Va. Code § 10.1-1300.

3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" means the BP Short facility, located on State Route 226 in Dinwiddie County, Virginia.
7. "FCE" means a full compliance evaluation by DEQ staff.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
9. "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.
10. "Permit" means a New Source Review permit to modify and operate a 250 ton per hour asphaltic concrete plant, which was issued under the Virginia Air Pollution Control Law and the Regulations to BP Short on May 24, 2007.
11. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
16. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (*see* 40 CFR 60, Appendix A).

SECTION C: Findings of Fact and Conclusions of Law

1. BP Short owns and operates the Facility in Dinwiddie County, Virginia. The Facility produces hot mix asphalt. The Facility is the subject of the Permit which allows the operation of a 250 ton per hour asphaltic concrete plant.

2. Inspections of the Facility were conducted on July 20 and 28, 2010, by Department staff for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations, as recorded in the FCE dated August 26, 2010. Based on the evaluation and follow-up information, Department staff made the following observations:

- a. Opacity from the baghouse/fabric filter exhaust was determined to be 35% while producing asphaltic concrete that contained 29% recycled asphaltic material (RAP).

Permit Condition 13 requires the NSPS equipment be operated in compliance with the requirements of 40 CFR 60, Subpart I.

40 CFR 60.92 states that no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any affected facility any gases which: (2) Exhibit 20 percent opacity, or greater.

Permit Condition 15 requires visible emissions from the asphalt plant baghouse/fabric filter exhaust shall not exceed 20 percent opacity as determined by EPA Method 9 when product containing at least 10 percent recycled asphaltic material is being produced and shall not exceed 5 percent opacity as determined by EPA Method 9 at other times. This condition applies at all times except during startup, shutdown, and malfunction.

Permit Condition 24 and 9 VAC 5-50-20(E) requires that at all times, including periods of start-up, shutdown, and malfunction, the permittee shall, to the extent practicable, maintain and operate the affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

- b. BP Short did not control fugitive dust emissions. DEQ staff noted that there was no evidence of dust control. Fugitive dust piled as high as several inches was covering the ground in a radius of 75 to 100 feet around the baghouse/fabric filter.

Permit Condition 3 and 9 VAC 5-50-90 require fugitive dust and fugitive emissions be controlled to prevent fugitive dust from becoming airborne.

- c. BP Short did not conduct the initial performance testing, Method 5 for particulate matter (PM), as well as the VEE, Method 9 for opacity, from the drum dryer baghouse/fabric filter when using recycled oil.

Permit Condition 16 and 40 CFR 60.8 require initial performance tests be conducted for PM from the drum dryer baghouse/fabric filter using Method 5 when using recycled oil to demonstrate compliance within 60 days after achieving the maximum production rate at which the Facility will be operated but in no event later than 180 days after start-up of the permitted Facility.

Permit Condition 17 and 40 CFR 60.8 require VEEs be conducted on the drum dryer baghouse/fabric filter when using recycled oil to demonstrate compliance within 60 days after achieving the maximum production rate at which the Facility will be operated but in no event later than 180 days after start-up of the permitted Facility. 9 VAC 5-80-1200(A) states that compliance with standards of performance for stationary sources shall be determined in accordance with the provisions of 9 VAC 5-50-20 and shall be verified by performance tests in accordance with the provisions of 9 VAC 5-50-30.

9 VAC 5-50-20(B) states that no owner of a new or modified source subject to the provisions of this chapter shall fail to conduct performance tests as required under this chapter.

- d. BP Short was operating equipment that was not listed in its Permit. DEQ staff noted that additional equipment not currently included its Permit was at the Facility and operational, including RAP bins, feeders, power screens, a Hammer Mill, 3 extra storage tanks (1 Vertical and 2 Horizontal), portable crushers, power screens, and miscellaneous conveyors.

9 VAC 5-80-1120(A) states “No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source.”

9 VAC 5-80-1210(D) 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.”

- e. BP Short did not maintain operational records required to determine compliance. DEQ staff noted that BP Short had the following records discrepancies: there were no throughput records for RAP or No.2 fuel oil, the asphalt concrete and recycled oil records were not maintained in the required format, there were no recycled or No.2 fuel certifications for 9 shipments that the Facility received, and there were no training records on site at the Facility.

Permit Condition 18 requires BP Short to maintain records of emission data and operating parameters for the most recent 5 years as necessary to demonstrate compliance with the Permit.

9 VAC 5-50-50(E) states any data or information required by the Regulations for the Control and Abatement of Air Pollution, any permit or order of the board, or which the owner wishes the board to consider, to determine compliance with an emission

standard shall be recorded or maintained in a time frame consistent with the averaging period of the standard.

9 VAC 5-50-50(H) states upon request of the board, the owner of a new or modified source subject to the provisions of this chapter shall provide notifications and reports, maintain records or report performance test or monitoring results in a manner and form and using procedures acceptable to the board.

- f. BP Short did not submit written notification to the Director of the Piedmont Region of the actual start-up date on which the drum dryer first used recycled fuel oil.

Permit Condition 20 and 9 VAC 5-50-50(A)(3) requires submittal of written notification to the Director of the Piedmont Region of the actual start-up date on which the drum dryer first used recycled fuel oil within 15 days after such date.

3. Va. Code § 10.1-1322 states that failure to meet conditions of the Permit is considered a violation.
4. 9 VAC 5-80-1210(H) requires the Facility to comply with all terms and conditions of the Permit.
5. On February 16, 2011, based on the evaluation and follow-up information, the Department issued Notice of Violation No. 10-10-PRO-401 to the BP Short for the violations described in paragraph C(2) through C(4), above.
6. On March 8, 2011, Department staff met with representatives of BP Short to discuss the violations. BP Short submitted a written response to the NOV during the meeting.
7. Based on the results of the August 26, 2010 evaluation, the July 20 and 28, 2010 Facility inspections, the March 8, 2011 meeting, including the documentation submitted at that meeting, the Board concludes that BP Short has violated the Permit, the CFR, and the Regulations, as described in paragraph C(2) through C(4), above.
8. In order for BP Short to complete its return to compliance, DEQ staff and representatives of BP Short have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

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

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of **\$20,369** in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
January 10, 2012	\$5,092.25
April 10, 2012	\$5,092.25
July 10, 2012	\$5,092.25
October 10, 2012	\$5,092.25

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

BP Short 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of BP Short for good cause shown by BP Short, 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, BP Short admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. BP Short 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. BP Short 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 BP Short 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. BP Short 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. BP Short shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BP Short 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 BP Short 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 BP Short. Nevertheless, BP Short 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. BP Short 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
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to BP Short.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BP Short 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 BP Short 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 BP Short 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 BP Short to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of BP Short.
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, B.P. Short & Son Paving Co., Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3RD day of JANUARY, 2012.



Michael P. Murphy, Regional Director
Department of Environmental Quality

B.P. Short & Son Paving Co., Inc. voluntarily agrees to the issuance of this Order.

Date: 12-21-11 By: THOMAS C. MOORE, JR. ENVIRONMENTAL DIRECTOR
(Person) (Title)
B.P. Short & Son Paving Co., Inc.

Commonwealth of Virginia
City/County of Prince George

The foregoing document was signed and acknowledged before me this 21st day of December, 2011, by THOMAS C. MOORE, JR who is ENVIRONMENTAL DIR. of B.P. Short & Son Paving Co., Inc., on behalf of the corporation.

Shelia K. Hixson
Notary Public

366521
Registration No.

My commission expires: 7-31-2013

Notary seal:



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PRO

APPENDIX A SCHEDULE OF COMPLIANCE

1. Performance Testing

BP Short shall conduct PM testing and concurrent VEEs in accordance with 40 CFR 60.8 and 9 VAC 5-80-1200 on the drum dryer baghouse/fabric filter when using recycled oil. BP Short shall:

- a. Submit to DEQ for review and approval a stack test and VEE protocol at least 30 days prior to testing and no later than **February 29, 2012**. Testing shall be completed in accordance with the protocol, as approved by the DEQ Piedmont Regional Office. During the tests, BP Short shall be required to operate at a minimum of 80% of their maximum rated capacity.
- b. Arrange the details of the test with Air Compliance staff of DEQ's Piedmont Regional Office.
- c. Conduct the test no later than **March 30, 2012**, in accordance with 40 CFR Part 60, Appendix A, Method 5 and Method 9 on the drum dryer baghouse/fabric filter at the Facility.
- d. Submit the test results to DEQ's Piedmont Regional Office within 45 days after completion of the test.

2. Opacity and Fugitive Dust

BP Short shall:

- a. **No later than February 15, 2012**, submit to DEQ, for review, a compliance plan addressing how BP Short will achieve and maintain consistent compliance with the Permit requirement for the visible emission limit and fugitive dust /emission controls condition. BP Short shall respond to any requests by DEQ for additional information or modifications to the compliance plan in accordance with the terms of such requests.
- b. Upon DEQ's completion of review and implementation of comments, the compliance plan shall become an enforceable part of this Order.

3. Permit

- a. **By February 1, 2012**, BP Short shall submit to DEQ, a complete Air Permit Application (Form 7), to reflect all of the current equipment both portable and stationary at the Facility. BP Short shall include a description of its method of determining compliance for each piece of equipment.

- b. BP Short shall supply provide any information or revisions requested by DEQ regarding the Air Permit Application described in Appendix A item 3(a), in accordance with the specifications and schedule set by DEQ in such a request.
- c. Any case decision issued by DEQ regarding the Air Permit Application described in item 4(a), shall immediately supersede Appendix A item 3(b) of this Consent Order.

4. **Records**

BP Short shall maintain on-site all records required under 9 VAC 5-40-50(F) and the Permit. These records shall include, but are not limited to:

- a. Annual production of asphalt concrete, annual consumption of recycled oil and #2 fuel oil by the drum dryer, daily and annual throughput of recycled asphaltic concrete to the drum dryer, all fuel supplier certifications, and scheduled and unscheduled maintenance and operator training. Throughput records shall be calculated in accordance with the Permit.
- b. BP Short shall maintain these records on-site, along with a copy of the Permit, and shall make these records available for inspection by DEQ upon request.

5. **Certification of Documents and Reports**

In accordance with 9 VAC 5-20-230(A), in all documents or reports, including, without limitation, the SEP Completion Report, submitted to DEQ pursuant to this Consent Order, BP Short, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

6. **DEQ Contact**

Unless otherwise specified in this Order, BP Short shall submit all requirements of Appendix A of this Order to:

Cynthia Akers
Enforcement Specialist, Sr.
VA DEQ – Piedmont Regional Office

Charles “Boots” King
Air Compliance Manager
VA DEQ – Piedmont Regional Office

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