



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION

ORDER BY CONSENT ISSUED TO

Brett Aggregates, Inc.
Registration #: 80982

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SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1187, -1184, -1307(D), -1309, and -1316(C), between the State Air Pollution Control Board and Brett Aggregates, Inc., for the purpose of resolving certain alleged violations of environmental law 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 citizens' board 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.

XC: Ron Phillips

5. "Order" means this document, also known as a Consent Order.
6. "Brett Aggregates" means Brett Aggregates, Inc., a sand and gravel processing plant.
7. "Facility" means Brett Aggregates, Inc.—Lynnwood Farm Plant located at Route 340, six miles north of Groffoes, VA.
8. "VRO" means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
9. "CFR" means Code of Federal Regulations.
10. "The Permit" means Brett Aggregates' Stationary Source Permit to Modify and Operate, dated January 6, 2006.
11. "The Regulation" means the Virginia Regulations for the Control and Abatement of Air Pollution, 9 VAC 5-10-10 et seq.

SECTION C: Findings of Facts and Conclusions of Law

1. Brett Aggregates is the owner and operator of the Facility, which is the subject of a Notice of Violation issued on May 7, 2007.
2. On October 4, 2006, DEQ inspected the Facility and observed equipment, including one Symons cone crusher and one Telesmith cone crusher, that had been installed without first obtaining an air permit. On October 24, 2006, DEQ issued a Warning Letter to Brett Aggregates requesting that a Form 7 Air Permit Application be submitted so that a permitting applicability determination could be made.
3. Upon review of the submitted Form 7, DEQ determined that the installation of the crushers was a modification subject to permitting, necessitating further enforcement action. DEQ issued a Stationary Source Permit to Modify and Operate on April 30, 2007, and a Notice of Violation on May 7, 2007.
4. Virginia Regulations for the Control and Abatement of Air Pollution state:
9 VAC 5-80-1120. A. 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.

SECTION D: Agreement and Order

By virtue of the authority granted it in Va. Code §§10.1-1309 and 10.1-1316, the Board orders Brett Aggregates, and Brett Aggregates agrees, to pay a civil charge of \$7679.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by

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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 1104
Richmond, Virginia 23218

The payment shall include Brett Aggregates' Federal ID number and shall state that it is being tendered in payment of the civil charge assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Brett Aggregates, for good cause shown by Brett Aggregates, or on its own motion after notice to Brett Aggregates and its opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein. 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 this 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, Brett Aggregates admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Brett Aggregates 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. Brett Aggregates declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *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 of Brett Aggregates to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Brett Aggregates 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. Brett Aggregates 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. Brett Aggregates shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Brett Aggregates 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 Brett Aggregates 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 Brett Aggregates. Notwithstanding the foregoing, Brett Aggregates 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. Brett Aggregates petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to Brett Aggregates.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Brett Aggregates from his obligation to comply with any statute, regulation,

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permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By appropriate signature below, Brett Aggregates voluntarily agrees to the issuance of this Order.

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And it is so ORDERED this day of 19 July, 2007

Amy Thatcher Owens
Amy Thatcher Owens, Regional Director
Valley Regional Office
Department of Environmental Quality

Brett Aggregates, Inc., voluntarily agrees to the issuance of this Order.

By: RAE
Date: 7/13/07

Commonwealth of Virginia
City/County of Prince George

The foregoing document was signed and acknowledged before me this 13th day of
July, 2007, by R. J. Young, who is
(name)

Vice President of Brett Aggregates, Inc., on behalf of Brett Aggregates, Inc.
(title)

Sammy C. Batten
Notary Public

My commission expires: August 31, 2009

