DEQ-VALLEY
APR 29 2011
TO:
FILE:

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801
(540) 574-7800 Fax (540) 574-7878
www.deq.virginia.gov

Douglas W. Domenech
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
C. S. MUNDY QUARRIES, INC.
Registration No. 80676

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 C. S. Mundy Quarries, Inc., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable General 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. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

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, as described in Va. Code § 10.1-1185.

5. "Facility" means the C. S. Mundy Quarries, Inc. facility, located at 477 Limestone Road in Quicksburg, Virginia that operates a limestone quarry and processing plant.

6. "Mundy" means C. S. Mundy Quarries, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. C. S. Mundy Quarries, Inc. is a "person" within the meaning of Va. Code § 10.1-1300.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

8. "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.

9. "General Permit" means a General Non-Metallic Mineral Processing Permit to operate a limestone quarry and processing facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to C. S. Mundy Quarries, Inc. on January 24, 2008.

10. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.

12. "Va. Code" means the Code of Virginia (1950), as amended.

13. "VAC" means the Virginia Administrative Code.

14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

15. "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. Mundy owns and operates the Facility in Shenandoah County, Virginia. The Facility is a limestone quarry and processing operation.

2. The Facility is the subject of a General Non-Metallic Mineral Processing Permit issued on January 24, 2008, which allows Mundy to operate a limestone quarry and processing plant. This General Permit incorporates by reference 40 CFR 60 Subpart OOO, the New Source Performance Standard for Nonmetallic Mineral Processing Plants. Mundy is an affected facility and therefore subject to 40 CFR Part 60, Subpart OOO.

3. On December 15, 2010, Department staff conducted a Partial Compliance Evaluation of the Facility's VEE Protocol Report, submitted on December 15, 2010, for compliance with the requirements of the Virginia Air Pollution Control Law, the General Permit, and the Regulations. Based on the inspection and follow-up information, Department staff

made the following observation:

a. The Protocol Report/Notification was submitted two days prior to the VEE test.

4. 9 VAC 5-510-230(D)(3) of the facility's General Permit, requires the permittee to furnish written notification to the department for "The anticipated date of visible emissions evaluations for affected facilities subject to 40 CFR Part 60, Subpart OOO postmarked at least 30 days prior to that date."

5. 40 CFR 60.8(d) (Subpart A) states that "The owner or operator of an affected facility shall provide the Administrator at least 30 days prior notice of any performance test, except as specified under other subparts, to afford the Administrator the opportunity to have an observer present."

6. On January 10, 2011, Department staff conducted a Partial Compliance Evaluation of the Facility's VEE Test Report, submitted on January 4, 2011, for compliance with the requirements of the Virginia Air Pollution Control Law, the General Permit, and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

   a. Mundy submitted letter of construction and installation dated August 19, 2008, for start-up of the tertiary crusher and associated equipment.
   b. VEE testing was completed on December 17, 2010, 670 days after day 180.

7. 9 VAC 5-510-200(C)(1) of the facility's General Permit, states: "Visible emissions evaluations shall be conducted in accordance with 40 CFR Part 60, Subpart A, Method 9 or Method 22, as applicable."

8. 40 CFR 60.8 (a) (Subpart A) states that "Except as specified in paragraphs (a)(1),(a)(2), (a)(3), and (a)(4) of this section, within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility,... the owner or operator of such facility shall conduct performance test(s) and furnish the Administrator a written report of the results of such performance test(s)."

9. On January 28, 2011, based on the two evaluations and follow-up information, the Department issued Notice of Violation No. AVRO7850 to Mundy for the violations described in paragraphs C(3) through C(8), above.

10. On February 7, 2011 and on February 24, 2011, Mundy submitted written responses to the NOV. In the responses, Mundy indicated that the violations cited in the NOV were inadvertent. As part of an organization-wide review of administrative practices, Mundy was directed by Mundy Quarries' parent company to review Mundy's various permits and licenses. As part of that review, they discovered that they had failed to perform the required VEE. Once they discovered the oversight of not completing the VEE, Mundy expedited completion of the VEE, which resulted in the submittal of the testing protocol

two days prior to testing. The VEE report indicates that no emissions violation occurred. In addition, Mundy has instituted a process of reviewing and auditing permit requirements on a quarterly basis to avoid future violations.

11. Based on the results of the December 15, 2010 and January 10, 2011 evaluations, and the documentation submitted on February 7, 2011 and February 24, 2011 from Mundy, the Board concludes that Mundy has violated the 9 VAC 5-510-200(C)(1), 9 VAC 5-510-230(D)(3), and 40 CFR 60.8 (a) and (d) as described in paragraphs C(3) through C(8), above.

12. Mundy completed the required VEE and has therefore returned to compliance.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Mundy, and Mundy agrees to pay a civil charge of **$1,122.00** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by 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

Mundy shall include its Federal Employer Identification Number (FEIN) 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 Mundy for good cause shown by Mundy, 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, Mundy admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Mundy consents to venue in the Circuit Court of Rockingham County for any civil action taken to enforce the terms of this Order.

5. Mundy 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 Mundy 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. Mundy 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. Mundy shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mundy 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 Mundy 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 Mundy. Nevertheless, Mundy 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. Mundy 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 Mundy.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mundy 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 Mundy 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 Mundy 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 Mundy to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Mundy

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, C. S. Mundy Quarries, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2nd day of May, 2011

Amy T. Owens, Regional Director
Department of Environmental Quality

C. S. Mundy Quarries, Inc. voluntarily agrees to the issuance of this Order.

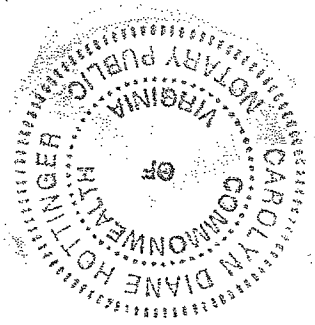
Date: April 28, 2011 By: David W. Harrison, President
David W. Harrison President
C. S. Mundy Quarries, Inc.

Commonwealth of Virginia
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 28 day of April, 2011, by David W. Harrison who is President of C. S. Mundy Quarries, Inc., on behalf of the corporation.

Carolyn Diane Hottinger
Notary Public

#344796
Registration No.

My commission expires: Oct. 31, 2012

Notary seal: