



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHCENTRAL REGIONAL OFFICE
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F. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Steven A. Dietrich
Regional Director

July 9, 2008

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO CHANDLER CONCRETE OF VIRGINIA INCORPORATED REGISTRATION NUMBER 30146

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-139 and 10.1-1316, between the State Air Pollution Control Board and Chandler Concrete of Virginia, Inc. for the purpose of resolving certain violations of the Air Pollution Control Law and Regulations. This violation was identified in a Notice of Violation (NOV) dated February 7, 2008.

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 Va. 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. "Chandler Concrete of Virginia, Inc." means Chandler Concrete of Virginia, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Facility" means the Chandler Concrete of Virginia, Inc. facility, located in Pittsylvania County, Virginia.
8. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution," which have been incorporated into Title 9 of the Virginia Administrative Code ("VAC").
9. "SCRO" means the South Central Regional Office of DEQ, located in Lynchburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Chandler Concrete of Virginia, Inc. acquired the assets of the former Marshall Concrete Products on June 2, 2006, including a facility in Pittsylvania County, Virginia. This facility is the subject of the Stationary Source Permit dated December 18, 1990, which allows it to construct and operate a ready mix concrete batch plant.
2. The DEQ issued a Letter of Noncompliance to this facility while owned by Marshall Concrete Products on June 30, 1997, for installing equipment without first applying for an air permit to construct and operate.
3. On January 7, 2008, the DEQ South Central Regional Office (SCRO) received a complaint from a private residence near the permitted source alleging that smoke was coming from the site. On the following day, DEQ staff investigated the complaint and determined that the permitted equipment in operation at the cement batch plant appeared to be in compliance with opacity regulations.
4. In a telephone conversation on January 9, 2008, the source's Human Resources Manager advised DEQ staff that an incinerator behind the block plant was the likely cause of the smoke complaint. The source's representative said the incinerator had been installed in the last three or four months for the purpose of burning discarded pallets and that he would advise plant staff to discontinue its use until a status determination was made by DEQ.
5. Article 45 of 9 VAC Chapter 40 (9 VAC 5-40-6250 *et seq.*) entitled "Emission Standards for Commercial/Industrial Solid Waste Incinerators (Rule 4-45)" became effective September 10, 2003. Combustion devices subject to this rule must apply for a Title V Operating Permit no later than December 1, 2003, as required by 9 VAC 5-40-6250 F.
6. A review of the Department's files indicate that Chandler Concrete of Virginia, Inc. never applied for a permit to construct and operate the incinerator located at 1088 Industrial Avenue, Danville, Virginia or otherwise provided prior notification to DEQ of its construction and operation.
7. On January 15, 2008, an on-site inspection was conducted. The source's representatives voluntarily informed DEQ staff that the incinerator had been completed and placed in use about two months prior to the present date. The source's Block Plant Manager also advised DEQ that he had discussed the proper method to burn discarded pallets with the City of Danville Fire Marshall. According to the Block Plant Manager, the City of Danville Fire Marshall advised him that open burning was not permitted but an

appropriate enclosed device, a.k.a. an incinerator, would be permitted by his agency. The Block Plant Manager advised DEQ that the incinerator was constructed in the mistaken belief that the local fire marshall was the agency that had sole jurisdiction over the burning of pallets. The source's Human Resources Manager offered to permanently shut down the incinerator and seek other means to dispose of discarded pallets.

8. In a meeting on February 19, 2008, at the SCRO, the source's representatives notified DEQ that the incinerator had been permanently shut down and the facility would seek an alternate legal means for disposal of discarded pallets. The source's representatives also informed DEQ that an internal inquiry indicated that the incinerator operated on sixteen non-consecutive days between approximately November 12, 2007, and the telephone conversation on January 9, 2008.
9. In a letter dated February 28, 2008, the source stated through its legal representative that the incinerator had been demolished. The source also stated that it would provide an affidavit stating that the incinerator operated on sixteen non-consecutive days between approximately November 12, 2007, and the telephone conversation on January 9, 2008.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 10.1-1186(2), 10.1-1309, and 10.1-1316(C), orders Chandler Concrete of Virginia, Inc. and Chandler Concrete of Virginia, Inc. agrees that:

1. Chandler Concrete of Virginia, Inc. shall pay a civil charge of \$14,409.00 within thirty (30) days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check, certified check, money order, or cashier check payable to "Treasurer of the Commonwealth of Virginia" and mailed to:

Receipts Control
Department of Environmental Quality
PO Box 1104
Richmond, Virginia 23218

Chandler Concrete of Virginia, Inc. shall include its Federal Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this paragraph.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Chandler Concrete of Virginia, Inc., for good cause shown by Chandler Concrete of Virginia, Inc., 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 addressed in the Notice of Violation issued to Chandler Concrete of Virginia, Inc. by DEQ on February 7, 2008. 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, Chandler Concrete of Virginia, Inc. admits the jurisdictional allegations, but neither admits nor denies the factual findings and conclusions of law contained herein.
4. Chandler Concrete of Virginia, Inc. 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. Chandler Concrete of Virginia, Inc. declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State 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 Chandler Concrete of Virginia, Inc. 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. Chandler Concrete of Virginia, Inc. 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. Chandler Concrete of Virginia, Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Chandler Concrete of Virginia, Inc. 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 Chandler Concrete of Virginia, Inc.. Notwithstanding the foregoing, Chandler Concrete of Virginia, Inc. agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 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 Chandler Concrete of Virginia, Inc. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Chandler Concrete of Virginia, Inc., from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below Chandler Concrete of Virginia, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 7-10, 2008.

Steven A. Dietrich
Regional Director
Department of Environmental Quality

Chandler Concrete of Virginia, Inc. voluntarily agrees to the issuance of this Order.

By: J. S. Chandler Jr. President
Date: 7/9/08

Commonwealth of Virginia, City/County of Lynchburg

The foregoing document was signed and acknowledged before me this 9th day of

July, 2008, by Thomas E. Chandler Jr., who is
(name)

President
(title)

of Chandler Concrete of Virginia, Inc. on behalf of the Corporation.

Rosa C. Brooks
Notary Public # 7038040

My commission expires: July 31, 2010