



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Secretary of Natural Resources

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Director

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Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MR. DAVID POWROZNIK AND COMMONWEALTH CONCRETE, L.L.C. Registration No. 52166

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 Mr. David Powroznik and Commonwealth Concrete, L.L.C., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, 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. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Commonwealth Concrete, L.L.C." means Commonwealth Concrete, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Commonwealth Concrete, L.L.C. is a "person" within the meaning of Va. Code § 10.1-1300.

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 Commonwealth Concrete, L.L.C. ready mixed concrete facility, located at 7998 Anguilla Drive in Prince George, Virginia.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "O&M" means operations and maintenance.
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 construct and operate a ready mixed concrete facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Commonwealth Concrete, L.L.C. on October 24, 2006.
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. Commonwealth Concrete owns and operates a ready mixed concrete facility located at 7998 Anguilla Drive in Prince George, Virginia. Mr. David Powroznik is the managing member and he has certified as such in the most recent submittal to the Department.
2. The Facility is the subject of the Permit which limits emissions of certain pollutants to the air during the operation of the ready mixed concrete facility.

3. On July 9, 2009, Department staff conducted a Full Compliance Evaluation (inspection) of the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

- a. Commonwealth Concrete failed to maintain and operate controls (baghouse) associated with the cement silo and the truck loading. Excess particulate emissions were noted coming from the baghouse vent during regular batch operation and silo unloading. DEQ staff noted that the hydraulics associated with the loadout skirt was malfunctioning not allowing the skirt to fully close to allow proper capture of the particulate emissions during truck loading. DEQ did not receive a report of this malfunction from Commonwealth Concrete.

Condition 2 of the Permit and 9 VAC 5-50-260 require particulate emissions from the unloading of cement into the cement silo be controlled by a baghouse.

Condition 4 of the Permit and 9 VAC 5-50-260 require particulate emissions from the transfer of cement to the truck mixer be controlled by a baghouse.

Condition 21 of the Permit and 9 VAC 5-20-180(C) require Commonwealth Concrete to submit a report of a malfunction within two weeks of discovery.

- b. Commonwealth Concrete did not install and operate a monitoring device for pressure drop associated with the silo baghouses and therefore, could not make observations of the device or maintain observation records on a daily basis.

Condition 7 and 9 VAC 5-50-260 of the Permit require Commonwealth Concrete to equip each baghouse with a monitoring device.

Condition 8 of the Permit requires Commonwealth Concrete to take observations of the monitoring device and record the observations on a daily basis.

- c. Commonwealth Concrete failed to control fugitive dust emissions. DEQ staff noted excessive fugitive emissions resulting from Commonwealth Concrete's failure to apply a dust suppressant on dirt roads, storage bins and stock piles.

Condition 6 and 9 VAC 5-50-90 of the Permit require fugitive dust and fugitive emissions be controlled to prevent fugitive dust from becoming airborne.

- d. Commonwealth Concrete failed to maintain operational records required to determine compliance. DEQ staff noted that Commonwealth Concrete did not have the following records: PM and PM₁₀ emissions, maintenance records for each baghouse and the process/control monitoring devices, daily observations of the process/control monitoring devices, visible emission evaluations, maintenance, operator training, and malfunction records, and did not have a copy of the Permit at the Facility. DEQ staff noted that the only records that were available were incomplete production records.

Condition 13 of the Permit and 9 VAC 5-50-50 require Commonwealth Concrete to maintain records of emission data and operating parameters for the most recent 5 years as necessary to demonstrate compliance with the Permit.

Condition 24 of the Permit requires a copy of the Permit be on the premises of the Facility.

- e. Commonwealth Concrete failed to conduct a visual emissions evaluation (VEE) on each of the three baghouses. The Permit was issued on October 24, 2006. Testing was required to be conducted by April 30, 2007.

Condition 12 of the Permit and 9 VAC 5-50-30 require a VEE to be conducted on the baghouses (BH-1, BH-2, and BH-3) within 18 months of initial issuance of the Permit.

- f. Commonwealth Concrete did not develop, initiate, and maintain records of a required operations and maintenance program. DEQ staff noted that there was no Operation and Maintenance plan, no inventory of spare bags for the baghouses, no written operating procedures, no formal training, and no log of maintenance performed.

Condition 19 of the Permit and 9 VAC 5-50-20(E) requires a maintenance schedule, records of maintenance, an inventory of spare parts, written operating procedures for equipment, operator training and records of training to minimize emissions from air pollution control equipment and process equipment at the Facility.

- 4. Va. Code § 10.1-1322 states that failure to meet conditions of the Permit is considered a violation.
- 5. 9 VAC 5-80-1210(H) requires the Facility to comply with all terms and conditions of the Permit.
- 6. On September 10, 2009, based on the inspection and follow-up information, the Department issued Notice of Violation No. 09-08-PRO-401 to Commonwealth Concrete for the violations described in paragraph C.3 above, with the exception of Conditions 4 and 21.
- 7. On October 1, 2009, Department staff met with a representative of Commonwealth Concrete to discuss the violations. The representative of Commonwealth Concrete stated what corrective actions were taken and will be taken to resolve the violations, which include the following: the baghouses were cleaned and the filters were replaced, pressure drop gauges will be installed, researching and considering the installation of a sprinkler system to control fugitive emissions, will be contacting sources to acquire a list of companies that perform VEEs. DEQ staff offered to provide a spreadsheet that will assist Commonwealth Concrete with meeting its recordkeeping requirements and provide a list of companies that perform VEEs.

8. On October 12, 2009, the Department received a written response to the NOV from Commonwealth Concrete reiterating what was discussed during the meeting held on October 1, 2009. The response also included the following in part: there were zero visible emissions from the baghouses at the time that the letter was written, pressure drop gauges were to be installed during the week of October 12, 2009, in an effort to control fugitive emissions Commonwealth Concrete established a daily routine using a water truck, plans to install a sprinkler system, and researched the use of chemicals as a way to control emissions, a monthly operational log was established, a VEE was scheduled for the week of October 19, 2009, a log book was established to record maintenance, spare cartridges and filters were purchased for the baghouses, a written operating procedure was to be established, and training for proper operations was to be established during the week of October 12, 2009.
9. The VEE that was scheduled for the week of October 19, 2009 was not conducted.
10. Based on the results of the inspection, the October 1, 2009 meeting, and the documentation received on October 12, 2009, the Board concludes that Commonwealth Concrete has violated Permit conditions 2, 4, 6, 7, 8, 12, 13, 19, 21, and 24, Va. Code §10.1-1322, 9 VAC 5-50-260, 9 VAC 5-50-90, 9 VAC 5-50-50, 9 VAC 5-50-30, 9 VAC 5-50-20(E), and 9 VAC 5-80-1210(H), as described in paragraph C.3, C.4, and C.5, above.
11. In order for Commonwealth Concrete to return to compliance, DEQ staff and representatives of Commonwealth Concrete 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 Mr. David Powroznik and Commonwealth Concrete, and Mr. David Powroznik and Commonwealth Concrete agree to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$7,571** 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

Commonwealth Concrete 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 Mr. David Powroznik and Commonwealth Concrete for good cause shown by Mr. David Powroznik and Commonwealth Concrete, 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, Mr. David Powroznik and Commonwealth Concrete admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Mr. David Powroznik and Commonwealth Concrete 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. Mr. David Powroznik and Commonwealth Concrete declare that they have received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and they waive 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 Mr. David Powroznik and Commonwealth Concrete 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. Mr. David Powroznik and Commonwealth Concrete 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. Mr. David Powroznik and Commonwealth Concrete shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mr. David Powroznik and Commonwealth Concrete 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 Mr. David Powroznik or Commonwealth Concrete 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 the Director or his designee, Mr. David Powroznik and Commonwealth Concrete. Nevertheless, Mr. David Powroznik and Commonwealth Concrete agree to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Mr. David Powroznik and Commonwealth Concrete petition 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 Mr. David Powroznik and Commonwealth Concrete.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. David Powroznik and Commonwealth Concrete from their 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 Mr. David Powroznik and Commonwealth Concrete 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 Mr. David Powroznik and Commonwealth Concrete 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 Mr. David Powroznik and Commonwealth Concrete to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Mr. David Powroznik and Commonwealth Concrete.
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 their signature below, Mr. David Powroznik and Commonwealth Concrete, L.L.C. voluntarily agree to the issuance of this Order.

And it is so ORDERED this 22ND day of SEPTEMBER, 2010.



Michael P. Murphy, Regional Director
Department of Environmental Quality

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Mr. David Powroznik voluntarily agrees to the issuance of this Order.

Date: 9/15/10

By: *David Powroznik*
David Powroznik

Commonwealth of Virginia

City/County of Colonial Heights

The foregoing document was signed and acknowledged before me this 15th day of
Sept, 2010, by David Powroznik.

Linda C. Kessinger
Notary Public

237261

Registration No.

My commission expires: 2/28/12

Notary seal:



Commonwealth Concrete, L.L.C. voluntarily agrees to the issuance of this Order.

Date: 9/15/10 By: David Powroznik, OWNER
(Person) (Title)
Commonwealth Concrete, L.L.C.
DAVID POWROZNIK

Commonwealth of Virginia
City/County of Colonial Heights

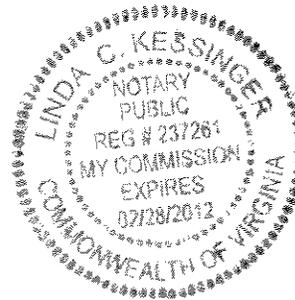
The foregoing document was signed and acknowledged before me this 15th day of
Sept, 2010, by David Powroznik who is
OWNER of Commonwealth Concrete, L.L.C., on behalf of the
corporation.

Linda C. Kessinger
Notary Public

237261
Registration No.

My commission expires: 2/28/12

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Commonwealth Concrete shall maintain devices to continuously measure differential pressure drop across baghouses BH-1, BH-2, and BH-3. The monitoring device shall be maintained, calibrated, and operated in accordance with Permit Condition 7.
2. Commonwealth Concrete shall maintain on-site all records required under 9 VAC 5-40-50(F) and the Facility's Permit. These records shall include, but are not limited to:
 - a. Calculated PM and PM₁₀ emissions, maintenance records for each baghouse and the process/control monitoring devices, daily observations of the process/control monitoring devices, visible emission evaluations, maintenance and operator training records, and malfunction records.
 - b. Commonwealth Concrete shall maintain these records on-site, along with a copy of the Facility's Permit, and shall make these records available for inspection by DEQ upon request.
3. In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, Commonwealth Concrete 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.”

4. Unless otherwise specified in this Order, Commonwealth Concrete shall submit all requirements of Appendix A of this Order to:

Jennifer Hoeffner
Enforcement Specialist, Sr.
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5123
804-527-5106 (fax)
jennifer.hoeffner@deq.virginia.gov

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