



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Francis L. Daniel  
Regional Director

## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO LAFARGE BUILDING MATERIALS INC. Registration No. 60159

### **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 Lafarge Building Materials Inc. for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the Regulations for the Control and Abatement of Air Pollution.

### **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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Facility" means the Lafarge Building Materials Inc. facility, located at 100 Pratt Street, Chesapeake, Virginia that operates a cement materials product storage, transfer and bagging facility.

5. Lafarge” means Lafarge Building Materials Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Lafarge is a “person” within the meaning of Va. Code § 10.1-1300
6. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. “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.
8. “Permit” means a State Operating Permit to construct and operate a cement materials product storage, transfer and bagging facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Lafarge on October 25, 2004.
9. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” means 9 VAC 5 Chapters 10 through 80.
10. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
11. “Va. Code” means the Code of Virginia (1950), as amended.
12. “VAC” means the Virginia Administrative Code.
13. “Virginia Air Pollution Control Law” means Chapter 13 (§ 10.1-1300 *et seq.*), of Title 10.1 of the Va. Code.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Lafarge owns and operates the Facility located at 100 Pratt Street in Chesapeake, Virginia which stores, transfers and bags cement materials products.
2. Lafarge is subject to the Permit which includes a cement barge unloading system that consists of four pneumatic conveyors and seven silo baghouses that feed into sixteen cement storage silos.
3. On March 19, 2009, DEQ compliance staff conducted a Full Compliance Evaluation at 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 observation:

DEQ staff observed a pneumatic railcar cement materials unloading system had been installed and operated that was not listed in the Permit.

4. On April 24, 2009, Lafarge submitted an air permit application to DEQ for the pneumatic railcar cement materials unloading system. A review of Lafarge's air permit application by DEQ air permitting staff indicated that the pneumatic railcar cement materials unloading system was subject to the Regulations and required an air permit.
5. On July 31, 2009, DEQ amended the Permit to include the pneumatic railcar cement materials unloading system.
6. On July 31, 2009, DEQ staff conducted a Partial Compliance Evaluation of the DEQ Facility record for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the March 19, 2009 inspection, follow-up information and issuance of the Permit, the DEQ staff made the following observations:

The pneumatic railcar cement materials unloading system had been installed and operated without first acquiring a permit.

7. 9 VAC 5-80-1120(A) states that, "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."
8. 9 VAC 5-80-1210 (D) states that, "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."
9. On August 13, 2009, based on the March 19, 2009 inspection and Permit issued July 31, 2009, the DEQ issued a NOV to Lafarge for the violations described in paragraphs C.3 through C.6 above.
10. Based on the results of the March 19, 2009 and July 31, 2009 inspections and issuance of the July 31, 2009 State Operating Permit, the Board concludes that Lafarge has violated 9 VAC 5-80-1120(A) and 9 VAC 5-80-1210(D) of the Regulations as described in paragraph C.6 and C.8 above.
11. Lafarge was issued a State Operating Permit to operate the pneumatic railcar cement materials unloading system on July 31, 2009 and the violations described in paragraphs C.3 through C.8, above, have been corrected.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and 1316, the Board orders Lafarge and Lafarge agrees to pay a civil charge of \$8,850.00 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

Lafarge 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 the Order with the consent of Lafarge good cause shown by Lafarge, 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 the purposes of this Order and subsequent actions with respect to this Order, Lafarge admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Lafarge 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. Lafarge declares it has received fair and due process under the Administrative Process Act, Va. Code 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 Lafarge 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. Lafarge 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. Lafarge shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Lafarge 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 within 24 hours and in writing within three business days, of learning of any condition above, which Lafarge intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of 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 Lafarge. Nevertheless, Lafarge 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) Lafarge 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 Lafarge.

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

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, Lafarge voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7<sup>th</sup> day of January, 200~~9~~<sup>10</sup> 710



Francis L. Daniel, Regional Director  
Department of Environmental Quality

Lafarge Building Materials Inc. voluntarily agrees to the issuance of this Order.

Date: DECEMBER 31, 2009 By: Neal Guest (Person) DIRECTOR OF DISTRIBUTION (Title)

of Lafarge Building Materials Inc.

**Commonwealth of Virginia** Georgia  
City/County of Stewart Co, Dalton

The foregoing document was signed and acknowledged before me this 31 day of December, 2009, by Neal Guest, who is Director of Distribution of Lafarge Building Materials Inc. on behalf of Lafarge Building Materials Inc.

Shirley G. Deloys  
Notary Public  
58-1290226  
Registration No.

My commission expires: July 29, 2011  
Notary Seal: