



RECEIVED  
AUG 12 2013  
DEQ SWRO

## COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOUTHWEST REGIONAL OFFICE  
355-A Deadmore Street, Abingdon, Virginia 24210  
Phone (276) 676-4800 Fax (276) 676-4899  
www.deq.virginia.gov

Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

Allen J. Newman, P.E.  
Regional Director

### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION – ORDER BY CONSENT ISSUED TO LIMESTONE DUST CORPORATION

**Registration No. 10318**

#### **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 Limestone Dust Corporation, regarding Limestone Dust Corporation, for the purpose of resolving a violation of the Virginia Air Pollution Control Law and the applicable permits and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings 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 Limestone Dust Corporation facility located at Route 650, St. Clairs Crossing, in Tazewell County, Virginia.

5. "Limestone Dust Corporation" means Limestone Dust Corporation, a corporation authorized to do business in Virginia and its affiliates, partners and subsidiaries. Limestone Dust Corporation 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. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Permit" means a New Source Review Permit (NSR) to operate a pulverized limestone production facility which was issued under the Air Pollution Control Law and the Regulations to Limestone Dust Corporation, effective May 12, 2003.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 chapters 10 through 80.
11. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
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.

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

1. Limestone Dust Corporation owns and operates the Facility in Tazewell County, Virginia.
2. The Facility is the subject of the Permit which allows the company to operate the pulverized limestone facility and process 172,000 tons per year of limestone, calculated monthly. The permit limitations were based upon historical data of Limestone Dust Corporation projected into the future.

3. On February 22, 2012, a Warning Letter was issued to Limestone Dust Corporation for exceedance of the permitted throughput limit of limestone during the calendar year 2011. Limestone Dust Corporation submitted this information in their annual update.
4. On March 15, 2012, Department staff received electronic correspondence from Limestone Dust Corporation, stating the exceedance in the throughput of limestone resulted from increase in production from the mine explosion accident at Upper Big Branch in West Virginia and change in the MSHA sampling of mine floor dust and debris and they did not anticipate operating at that production rate again. Subsequent telephone correspondence between Limestone Dust Corporation and Department staff on March, 23, 2012 and personal communications thereafter confirmed that Limestone Dust Corporation will submit a permit modification application for increase in the permit throughput limit. An increase is necessitated by market demands for the product which is used for human safety purposes in coal mining.
5. On March 27, 2013, Department staff received electronic correspondence from Limestone Dust Corporation as the Annual Update for Calendar Year 2012, stating the annual throughput of limestone for calendar year 2012 was 188,275 tons raw material processed.
6. On April 5, 2013, Department staff received an electronic message from Limestone Dust Corporation which contained a revised annual update report for calendar year 2012. Limestone Dust Corporation stated the revision was the result of investigation regarding the production and sales figures, finding the pallets and shrink wrap were inadvertently included in a part-time report. The revised report listed a throughput of 177,798 tons of limestone processed in 2012. A telephone conversation with Limestone Dust Corporation on this same day confirmed the revised 2012 throughput reported was correct.
7. On April 12, 2013, Department staff conducted a PCE for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations for review of the Annual Update for Calendar Year 2012.
8. Condition No. 7 of the Permit states, "The facility shall process no more than 172,000 tons per year of limestone calculated monthly as the sum of each consecutive 12 month period."
9. 9 VAC 5-80-850 provides that, "A. A permit may be granted pursuant to this article if it is shown to the satisfaction of the board that the following standards and conditions will be met: 1. The stationary source or emissions

unit shall operate without causing a violation of the applicable provisions of regulations of the board;...”

10. 9 VAC 5-170-160(A) - (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part: “The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.”
11. Va. Code § 10.1-1322(A) gives the Department the authority to issue, amend, revoke or terminate and reissue permits, and failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.
12. On April 15, 2013, based on the electronic report submitted, follow-up telephone conversation and the April 15, 2013 PCE, the Department issued a Notice of Violation No. ASWRO8668 to Limestone Dust Corporation for the violations described in paragraph C(5) through C(9), above.
13. On April 22, 2013, representatives of Limestone Dust Corporation submitted a telephone response by attorney to the NOV.
14. On May 16, 2013, Department staff met with representatives of Limestone Dust Corporation to discuss the violation.
15. Based on the results of the April 12, 2013 PCE, the April 22, 2013 response, and the May 16, 2013 meeting, the Board concludes that Limestone Dust Corporation has violated Condition 7 of the Permit, issued by the Board pursuant to 9 VAC 5-80-850 as described in paragraphs C(8) through C(9), above.
16. In order for Limestone Dust Corporation to complete its return to compliance, DEQ staff and representatives of Limestone Dust Corporation 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 Limestone Dust Corporation and Limestone Dust Corporation agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$1,285 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", delivered to:

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

Limestone Dust Corporation shall include its Federal 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Limestone Dust Corporation shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Limestone Dust Corporation for good cause shown by Limestone Dust Corporation, 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 only those violations specifically identified in Section C of this Order and NOV No. ASWRO8668 dated April 15, 2013. This Order shall not preclude the Board or 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, Limestone Dust Corporation neither admits nor denies the

jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Limestone Dust Corporation consents to venue in the Circuit Court of Tazewell County for any civil action taken to enforce the terms of this Order.
5. Limestone Dust Corporation 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 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 or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by Limestone Dust Corporation 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. Limestone Dust Corporation 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Limestone Dust Corporation shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Limestone Dust Corporation shall notify 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 this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of 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 listed above, which the parties intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

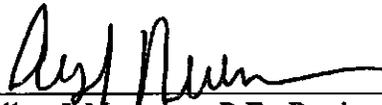
- 9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Limestone Dust Corporation. Nevertheless, Limestone Dust Corporation agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Limestone Dust Corporation has completed all of the requirements of the Order,
  - b. Limestone Dust Corporation 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
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Limestone Dust Corporation.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Limestone Dust Corporation 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 Limestone Dust Corporation 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 Limestone Dust Corporation 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 Limestone Dust Corporation to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Limestone Dust Corporation.
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, Limestone Dust Corporation voluntarily agrees to the issuance of this Order.

And it is ORDERED this 12 day of August,  
2013

  
\_\_\_\_\_  
Allen J. Newman, P.E., Regional Director  
Department of Environmental Quality

Limestone Dust Corporation voluntarily agrees to the issuance of this Order.

Date: 8/8/13 By: Michael McGlothlin  
Michael McGlothlin, President  
Limestone Dust Corporation

Commonwealth of Virginia

City/County of Tazewell

The foregoing document was signed and acknowledged before me this 08 day  
of  
August, 2013, by Michael McGlothlin  
who is

\_\_\_\_\_ of Limestone Dust Corporation,  
on behalf of the corporation.

Kevin W. McGlothlin  
Notary Public

7525361  
Registration No.

September 30, 2016  
My commission expires:

Notary Seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

### 1. Limestone Dust Corporation:

- a. Shall comply with all conditions of the current permit dated May 12, 2003.
- b. Shall submit a complete application for amendment of its SOP permit within 14 days of the execution of this Order.

### 2. Certification of Documents and Reports

In accordance with 9 VAC 5-20-230(A), in all documents or reports, including, without limitation, the SEP Completion Report, submitted to DEQ pursuant to this Consent Order, Limestone Dust Corporation, 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.”

### 3. DEQ Contact

Unless otherwise specified in this Order, Limestone Dust Corporation shall submit all requirements of Appendix A of this Order to:

Crystal C. Bazyk  
Enforcement and Air Compliance/Monitoring Manager  
VA DEQ – SWRO  
355-A Deadmore Street  
Abingdon, VA 24210  
(276) 676-4829  
(276) 676-4899  
crystal.bazyk