



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
MID-ATLANTIC MATERIALS, INC.  
FOR  
THE HAYFIELD SAND AND GRAVEL PLANT  
Registration No. 40891**

### **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 Mid-Atlantic Materials, Inc., regarding Mid-Atlantic Material's Facility Registration No. 40891, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and 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. "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 Hayfield Sand and Gravel Plant, located at 18173 Tidewater Trail in Port Royal Virginia.

6. "Mid-Atlantic" or "Mid-Atlantic Materials" means Mid-Atlantic Materials, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Mid-Atlantic 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. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
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 permit to modify and operate a sand and gravel screening facility which was issued under the Virginia Air Pollution Control Law and the Regulations to Mid-Atlantic Materials, Inc. on June 18, 2008. The June 2008, permit supersedes the July, 2007, permit.
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. Mid-Atlantic owns sand and gravel screening facilities at various locations throughout Virginia.
2. The Facility is the subject of the Permit which allows Mid-Atlantic to modify and operate a sand and gravel screening plant.
3. On August 17, 2009, DEQ conducted a Full Compliance Evaluation (inspection) at the Facility for compliance with the requirements of the Virginia Air Pollution Control law, the Permit, and the Regulations.
4. At the time of the August 17, 2009, inspection, facility personnel were unable to produce records demonstrating that Mid-Atlantic calculates the annual production of sand and gravel as the sum of each consecutive twelve month period, as required by Condition 13 of the Facility's Permit; no records could be provided demonstrating that the throughput of crushed stone and the throughput of materials processed through the triple deck screen are being calculated annually, as the sum of each consecutive twelve month period as required by Condition 13 of the Facility's Permit; and no records could be provided demonstrating that operators of plant

equipment have been trained in the proper operation of plant equipment as required by Condition 13(d) of the Facility's Permit.

5. Mid-Atlantic failed to submit written notifications to DEQ indicating the actual start-up date of the primary crusher, or notification of the anticipated test date for the required VEE test, as required by Condition #14(b) and (c) of the Facility's Permit.
6. Mid-Atlantic failed to conduct a VEE on the plant's primary crusher within the time period specified by the Permit; and failed to conduct a VEE for the facility's triple deck screen, as required by 40 CFR Part 60, Subpart A 60.8 and 40 CFR Part 60, Subpart OOO 60.672.
7. Based on the aforementioned observations, and a file review conducted by DEQ staff, DEQ issued a NOV to Mid-Atlantic on September 2, 2009.
8. On September 14, 2009, DEQ received a written response to the September 2, 2009, NOV from Mid-Atlantic, stating that Mid-Atlantic had been calculating the required information and storing it online in their Environmental Management System Envoy software, however it was not accessible onsite at the time of the DEQ inspection. Mid-Atlantic has now instituted a chronicle, on-site, of the twelve month consecutive production tonnage as well as their current monthly production log.
9. Included in the September 14, 2009, response was documentation from the Facility's online Environmental Management System Envoy software that showed all Mid-Atlantic employees receive annual training as required by Condition 13(d) of the Permit.
10. Mid-Atlantic submitted a document on August 18, 2009, providing notification of actual start-up date of the primary crusher and notification of the anticipated test date for the required VEE test as required by Condition 14(c) of the Permit.
11. Mid-Atlantic submitted a VEE protocol to DEQ on August 18, 2009, and the VEE was performed on the facility's primary crusher on August 19, 2009. DEQ received the VEE test report for the VEE testing conducted on the primary crusher. No visible emissions were reportedly observed during the VEE testing.
12. Mid-Atlantic submitted, and DEQ received, a VEE protocol for the triple deck screen on September 30, 2009. The VEE testing was conducted by the facility on the triple deck screen on September 30, 2009. DEQ received the VEE test report for the VEE testing conducted on the triple deck screen on October 13, 2009. Based on the data presented, each emission point evaluated appears to be in compliance with the 10 percent opacity standards of NSPS Subpart 000.
13. Mid-Atlantic representatives met with DEQ staff on October 22, 2009, to discuss the aforementioned violations.
14. A revised NOV was issued by DEQ to Mid-Atlantic on April 8, 2010. The revised cited the following violations which are being resolved in this Order:
  - Failure to provide records, at the time of inspection, demonstrating that Mid-Atlantic calculates production of sand and gravel annually as the sum of each

consecutive twelve-month period, as required by Condition 4 of the Air Permit dated June 18, 2008.

- Failure to conduct the required VEEs on the Facility's primary crusher within the time period specified by the Facility's Permit, as required by Condition 9 of the Air Permit dated June 18, 2008.
- Failure to provide records, at the time of inspection, demonstrating that the throughput of crushed stone and the throughput of materials processed through the triple deck screen are calculated annually as the sum of each consecutive twelve-month period, as required by Condition 13 a and b of the Air Permit dated June 18, 2008.
- Failure to provide records, at the time of inspection, indicating that VEEs were conducted at the facility, as required by Condition 13(c) of the Air Permit dated June 18, 2008.
- Failure to provide records at the time of inspection, demonstrating that operators of plant equipment have been trained, as required by Condition 13(d) of the Air Permit dated June 18, 2008.
- Failure to provide written notification of the actual start-up date of the primary crusher or notification of the anticipated test date for the required VEE test as required by Condition 14(c) of the Air Permit dated June 18, 2008.
- Failure to conduct the required VEEs on the Facility's triple deck screen, as required by 9 VAC 5-50-410, 40 CFR Part 60 Subpart OOO, 40 CFR Part 60 Subpart A 60.8.

15. Based on the information obtained at the October 22, 2009 meeting, and the August 17, 2009 inspection, the Board concludes that Mid-Atlantic has violated:

- 40 CFR Part 60 Subpart A 60.8
- 40 CFR Part 60 Subpart OOO 60.672
- Condition 9 of the Air Operating Permit dated June 18, 2008
- Condition 13 (a, b, c, & d) of the Air Operating Permit dated June 18, 2008
- Condition 14(b) of the Air Operating Permit dated June 18, 2008
- Condition 14(c) of the Air Operating Permit dated June 18, 2008

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Mid-Atlantic Materials, Inc. agrees to pay a civil charge of \$9,503.00 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

Mid Atlantic Materials, Inc. 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 Mid-Atlantic for good cause shown by Mid-Atlantic, 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, Mid-Atlantic admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Mid-Atlantic 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. Mid-Atlantic 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 Mid-Atlantic 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. Mid-Atlantic 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. Mid-Atlantic shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mid-Atlantic 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 Mid-Atlantic 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 Mid-Atlantic. Nevertheless, Mid-Atlantic 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. Mid-Atlantic 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 Mid-Atlantic.

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

And it is so ORDERED this 2<sup>nd</sup> day of June, 2010.



Thomas A. Faha, NRO Regional Director  
Department of Environmental Quality

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Mid-Atlantic Materials., Inc. voluntarily agrees to the issuance of this Order.

Date: 5/27/10 By: Vin Bush, PRES  
(Person) (Title)

State of Maryland

~~Commonwealth of Virginia~~

~~City/County of~~ Howard

The foregoing document was signed and acknowledged before me this 27<sup>th</sup> day of May,  
2010, by Vince Bush who is  
President of Mid-Atlantic Materials, Inc., on behalf of the corporation.

Donald Egan  
Notary Public

Registration No.

My commission expires: 5-13-2013

Notary seal: