



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
TIDEWATER REGIONAL OFFICE

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Secretary of Natural Resources

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## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO NANSEMOND RIVER CONTRACTORS CORP.

Registration number 61505

### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1307.D, §10.1-1309, §10.1-1316.C, and §10.1-1184 between the State Air Pollution Control Board and Nansemond River Contractors Corp., for the purpose of resolving certain violations of environmental law and regulations.

### 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. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
7. "Nansemond River Contractors" means Nansemond River Contractors Corp., certified to do business in Virginia, and its affiliates, partners, subsidiaries, and parents.

8. "CFR" means Code of Federal Regulations.
9. "NSPS" means Standards of Performance for New Stationary Sources as promulgated in 40 CFR Part 60.
10. "Permit" means Synthetic Minor Stationary Source Permit To Install and Operate, which includes designated equipment subject to NSPS, issued to Nansemond River Contractors Corp. on April 24, 2006.
11. "Regulations" means Virginia Regulations for the Control and Abatement of Air Pollution (9 VAC 5-80-10 et seq.).

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

1. Nansemond River Contractors owns the concrete and asphalt crushing operation ("facility") located at 5304 W Military Highway, Chesapeake.
2. Pursuant to the Regulations, DEQ issued the Permit to install and operate a concrete and asphalt crusher and screening system with two diesel fueled engines. The crusher was of capacity (greater than 150 tons per hour) to be applicable to NSPS 40 CFR 60-Subpart 000.
3. Condition number 21.b. of the Permit requires written notification to DEQ of the actual start-up date of the crusher system within 15 days after the start-up date. DEQ received notification of the crusher system actual startup date of August 14, 2006 on November 13, 2006, 77 days late.
4. On November 13, 2006, TRO staff visited the facility and discovered the facility had been modified by installation and operation of one new M80 Powerscreen conveyor with 85HP diesel fuel engine, the new M80 Powerscreen conveyor with a listed capacity of 200 tons per hour also applicable to NSPS 40 CFR 60-Subpart 000. The new M80 Powerscreen conveyor with 85HP diesel fuel engine was not listed in the Permit.
5. 9 VAC 5-80-1120(A)(Article 6) of the Regulations states: "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."
6. 9 VAC 5-80-1110(C)(Article 6) of the Regulations states: "'Stationary source' means any building, structure, facility or installation, which emits any regulated air pollutant."
8. According to 9 VAC 5-50-400 of the Regulations and 40 CFR 60 Subpart 000, the new conveyor is of capacity and date of construction to be subject to NSPS standards of performance for nonmetallic mineral processing plants, greater than 150 tons per hour, constructed after August 31, 1983.

9. Nansemond River Contractors did not have an air permit for the new M80 Powerscreen conveyor with 85HP diesel engine generator at the time of the inspection.
10. DEQ alleges that Nansemond River Contractors violated Permit condition #21b by not providing notification within 15 days of actual startup of Permit equipment.
11. DEQ alleges that Nansemond River Contractors violated the Regulations by constructing the new M80 Powerscreen conveyor (NSPS) with 85HP diesel fuel engine without an air permit.
12. DEQ issued Nansemond River Contractors a Notice of Violation on February 2, 2007 informing of the above facts and applicable regulatory and statutory citations.
13. On November 28, 2006 TRO received an air permit application from Nansemond River Contractors for the new M80 Powerscreen conveyor with 85HP diesel fuel engine. The modified air permit for the new M80 Powerscreen conveyor with 85HP diesel fuel engine at the facility was issued January 29, 2007.

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

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316.C, orders Nansemond River Contractors, and Nansemond River Contractors voluntarily agrees, to pay a civil charge of \$3,800.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," shall indicate Nansemond River Contractor's Federal Identification Number, and shall be sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Nansemond River Contractors, for good cause shown by Nansemond River Contractors, 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 Nansemond River Contractors Corp. by DEQ on February 2, 2007. 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, Nansemond River Contractors admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Nansemond River Contractors 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. Nansemond River Contractors 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 Nansemond River Contractors 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. Nansemond River Contractors 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. Nansemond River Contractors shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Nansemond River Contractors 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 Nansemond River Contractors. Notwithstanding the foregoing, Nansemond River Contractors 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 Nansemond River Contractors. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Nansemond River Contractors 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, Nansemond River Contractors voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 25, 2007.

Francis L. Daniel  
Francis L. Daniel

Nansemond River Contractors voluntarily agrees to the issuance of this Order.

By: William Underwood  
Date: 6-19-07

Commonwealth of Virginia  
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 19<sup>th</sup> day of June, 2007, by William Underwood, who is

CO-OWNER of Nansemond River Contractors, on behalf of Nansemond River  
(title)  
Contractors.

[Signature]  
Notary Public

My commission expires: 5-31-2011  
reg ID# 338156