



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN VIRGINIA REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3801
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Jeffery A. Steers
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION

ORDER BY CONSENT

ISSUED TO

ROWE CONCRETE, LLC

Registration No. 40746 and 40831

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1309 and 10.1-1316 between the State Air Pollution Control Board and Rowe Concrete, LLC, for the purpose of resolving certain alleged violations of environmental laws and regulations and to provide for the payment of civil charges.

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. "Regulations" means 9 VAC 5-10-10 et seq., the State Air Pollution Control Board Regulations for

the Control and Abatement of Air Pollution.

7. "Rowe", means Rowe Concrete, LLC certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
8. "Stafford Facility", means the Rowe Concrete, LLC site located at 169 Wyche Road, Stafford County, Virginia.
9. "Spotsylvania Facility", means the Rowe Concrete, LLC site located at 8520 Indian Hills Court, Spotsylvania County, Virginia.
10. "FSO" means the Fredericksburg Satellite Office of DEQ, located in Fredericksburg, Virginia.

SECTION C: Finding of Facts and Conclusions of Law

1. Rowe operates concrete batch plants at the Stafford and Spotsylvania Facility that are the subject of Stationary Source permits issued by DEQ on August 28, 1998 ("Stafford Permit") and August 13, 2004 ("Spotsylvania Permit"), respectively.
2. On March 23, 2006, DEQ FSO staff conducted an inspection of the Stafford Facility and noticed clouds of dust being blown by a Rowe employee from the roof area of one of the buildings that surround one of the storage silos. Rowe's Stafford Facility Manager, David Meeks, indicated that the employee was improperly cleaning the cement product that accumulated from the cement suppliers overfilling the silos. Rowe's standard practice is to chisel the material and then lower it in buckets to the ground where it is reused.
3. On March 29, 2006, DEQ FSO staff conducted another compliance inspection of the Stafford Facility. During this instance, staff observed fugitive dust emissions from the haul roads and stockpiled materials. Rowe's Maintenance Operations Manager, Jim Valentine, who accompanied staff on the inspection, indicated that the Stafford Facility usually controls fugitive emissions using loader buckets filled with water and a water truck that rotates between all of Rowe's plants.
4. A review of the office files during this inspection indicated that Rowe has not maintained the required training records, fuel supplier certifications, and maintenance records at the Stafford Facility.
5. The Board has evidence to indicate that Rowe has violated the Stafford Permit and the Regulations by: (1) failing to maintain systems to control fugitive dust emissions (i.e., lack of a wet suppression system) pursuant to Permit Condition No. 4; (2) failing to take reasonable precautions to prevent particulate matter from becoming airborne with respect to the blowing of accumulated cement from the roof area of one of the buildings pursuant to 9 VAC 5-50-90; (3) failing to maintain fuel supplier certification records pursuant to Permit Condition No. 7; (4)

failing to maintain a maintenance schedule and records pursuant to Permit Condition No. 9; and (5) failing to maintain employee training records pursuant to Permit Condition No. 10. DEQ issued one Warning Letter (WL) on March 30, 2006, and two Notices of Violation (NOV) on April 14, 2006 and May 12, 2006, to Rowe for the above referenced violations at the Stafford Facility.

6. DEQ staff and Rowe representatives met on June 2, 2006, to discuss these compliance issues and options to return to compliance. Rowe offered to address the deficiencies pertaining to the wet suppression system and the daily operation and maintenance of the Stafford Facility. After the meeting, and based in part on what was agreed to during the meeting, DEQ developed Appendix A of this Order.
7. DEQ FSO staff conducted a full compliance evaluation of the Spotsylvania Facility on June 7, 2006. Dust from the haul roads and the yard was initially being controlled by wet suppression upon arrival at the plant to start the inspection. However, as the inspection progressed the haul roads and yard became increasingly dusty and no additional wet suppression was applied. Throughout the inspection DEQ FSO staff reminded Rowe that it is responsible for ensuring that dust from the haul roads and yard are controlled.
8. A file review conducted by DEQ FSO staff during the inspection also revealed that the Spotsylvania Facility has not maintained the required maintenance and fuel records.
9. The Board has evidence to indicate that Rowe has violated the Spotsylvania Permit and the Regulations by: (1) failing to maintain systems to control fugitive dust emissions pursuant to Permit Condition No. 5; (2) failing to maintain fuel supplier certification records pursuant to Permit Condition No. 7, 8, 9, and 12; and (3) failing to maintain a maintenance schedule and records pursuant to Permit Condition No. 19. DEQ issued a NOV on June 23, 2006 to Rowe for the above referenced violations at the Spotsylvania Facility.
10. DEQ and Rowe representatives met on August 2, 2006 to discuss the violations at the Spotsylvania Facility. Subsequently, Rowe provided adequate maintenance records to DEQ and is currently working with its fuel suppliers to provide the remaining fuel certification records.
11. Appendix A of this Order requires Rowe to complete installation of a wet suppression system at the Stafford Facility and submit an Operations and Maintenance (O&M) Manual for the Stafford and Spotsylvania Facility to address the remaining issues of noncompliance.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and 10.1-1316, and upon consideration of Va. Code § 10.1-1186.2, the Board orders Rowe Concrete, LLC, and Rowe Concrete, LLC agrees, to perform the actions described below and in Appendices A and B of this Order. In

addition, the Board orders Rowe Concrete, LLC, and Rowe Concrete, LLC voluntarily agrees, to a civil charge of \$9,000 in settlement of the violations cited in this Order, to be paid as follows:

1. Rowe Concrete, LLC shall pay \$2,200 of the civil charge within 30 days of the effective date of 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

The payment shall include Rowe Concrete, LLC's Federal ID number and shall identify that payment is being made as a result of this Order.

2. Rowe Concrete, LLC shall satisfy \$6,800 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.
3. The net project cost of the SEP to Rowe Concrete, LLC shall not be less than the amount set forth in Paragraph D.2. If it is, Rowe Concrete, LLC shall pay the remaining amount in accordance with Paragraph D. 1 of this Order, unless otherwise agreed to by the Department. "Net project costs" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
4. By signing this Order Rowe Concrete, LLC certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.
5. Rowe Concrete, LLC acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Rowe Concrete, LLC to a third party, shall not relieve Rowe Concrete, LLC of its responsibility to complete the SEP as described in this Order.
6. In the event it publicizes the SEP or the SEP results, Rowe Concrete, LLC shall state in a prominent manner that the project is part of a settlement for an enforcement action.
7. The Department has the sole discretion to:
 - a. Authorize any alternate SEP proposed by the Facility; and

- b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
8. Should the Department determine that Rowe Concrete, LLC has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Rowe Concrete, LLC in writing. Within 30 days of being notified, Rowe Concrete, LLC shall pay the amount specified in Paragraph D.2., above, as provided in Paragraph D.1., above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Rowe, for good cause shown by Rowe, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein and listed above in Section C-2. 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, Rowe admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Rowe 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. Rowe 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 he 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 Rowe 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. Rowe 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. Rowe shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rowe 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.
 - a. Such notice shall set forth:
 - b. the reasons for the delay or noncompliance;
 - c. the projected duration of any such delay or noncompliance;
 - d. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - e. the timetable by which such measures will be implemented and the date full compliance will be achieved.

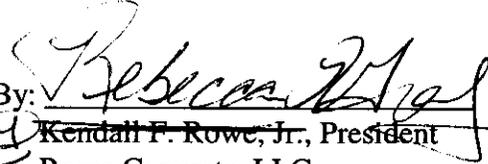
Failure to so notify the Regional Director within twenty-four (24) hours of learning of any condition above, which Rowe intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. Any plans, reports, schedules, permits, or specification attached hereto or submitted by Rowe 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.
11. This Order shall become effective upon execution by both the Director or his designee and Rowe. Notwithstanding the foregoing, Rowe agrees to be bound by any compliance date, which precedes the effective date of this Order.
12. 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 Rowe. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rowe from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. By its signature below, Rowe voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 11/28, 2006.

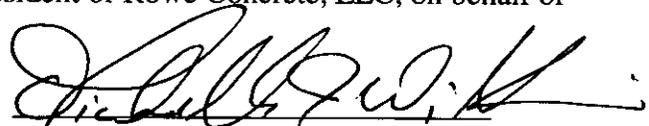

Jeffery A. Steers, Regional Director
Department of Environmental Quality
Northern Virginia Regional Office

Rowe Concrete, LLC voluntarily agrees to the issuance of this Order.

By: 
 Kendall F. Rowe, Jr., President
Rowe Concrete, LLC
REBECCA R. GRAF
Date: 11-14-06

Commonwealth of Virginia
City/County of Spotsylvania

The foregoing document was signed and acknowledged before me this 14th day of November, 2006, by Kendall F. Rowe, Jr. who is President of Rowe Concrete, LLC, on behalf of Rowe Concrete, LLC. REBECCA R. GRAF


Notary Public

My commission expires: 9/00/2009

**APPENDIX A
SCHEDULE OF COMPLIANCE**

Rowe Concrete, LLC shall:

1. By no later than November 30, 2006, complete installation and operation of a sprinkler system that will control fugitive dust emissions from open storage stockpiles, conveying equipment, and haul roads at the Stafford Facility. Rowe shall provide written notification to DEQ when the installation is complete.
2. By no later than November 30, 2006, submit to DEQ for review and approval, an Operations and Maintenance (O&M) Manual for the Stafford and Spotsylvania Facility. This manual shall include, but not be limited to, the following items:
 - a. Facility design and operational procedures;
 - b. Routine preventative maintenance schedule for the operation of the Facility and critical spare parts inventory; and
 - c. Environmental document control and record keeping pursuant to the Permit, including, but not limited to, fuel supplier certifications and employee training records.

APPENDIX B

Rowe Concrete, LLC shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by Rowe Concrete, LLC is the purchase and use of a wet sweeper truck system to keep Rowe's haul roads and surrounding public roads clean to prevent fugitive dust emissions.
2. The SEP shall be completed by January 1, 2007.
3. Rowe Concrete, LLC shall verify its completion of the SEP in writing, either in the form of a certification from a Certified Public Accountant or a certification from a responsible corporate officer or owner that the SEP has been completed in accordance with the terms of this Order. Rowe Concrete, LLC shall submit the verification to the Department within ninety (90) days from the effective date of the Order.
4. If the SEP has not or cannot be completed as described in the Order, Rowe shall notify DEQ in writing no later than January 1, 2007. Such notification shall include:
 - a. an alternate SEP proposal, or
 - b. payment of the amount specified in Paragraph D.2 as described in Paragraph D.1.
5. Rowe Concrete, LLC hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
6. Rowe Concrete, LLC shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or other similar documentation within thirty (30) days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from Rowe Concrete, LLC Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.
7. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Carl Ciccarelli
Regional Enforcement Specialist
DEQ-NVRO
13901 Crown Court
Woodbridge, VA 22193