



FSO-274-06

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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David K. Paylor
Director

Jeffery A. Steers
Regional Director

STATE AIR POLLUTION CONTROL BOARD ORDER BY CONSENT ISSUED TO Smith-Midland DEQ Air Facility Registration No. 40486

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1307 D, § 10.1-1309 and 10.1-1316 C, between the State Air Pollution Control Board (“SAPCB”) and Smith-Midland for the purpose of resolving certain alleged violations of the Air Pollution Control Law and/or regulations as specified in Section C of this Order.

SECTION B: Definitions

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

- “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 Code §§ 10.1-1301 and 10.1-1184.
 3. “CFR” means The Code of Federal Regulations.
 4. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
 5. “Director” means the Director of the Department of Environmental Quality.
 6. “Facility” means Smith-Midland – 5119 Catlett Road, Midland, Virginia (Fauquier County). Smith-Midland is the manufacturer of precast concrete products used in construction, utility and highway projects.

7. "FSO" means the Fredericksburg Satellite Office of the Northern Virginia Regional Office of DEQ, located in Fredericksburg, Virginia.
8. "Order" means this document, also known as a Consent Order.
9. "Regulations" refers to the Regulations for the Control and Abatement of Air Pollution for the Commonwealth of Virginia.
10. "VAC" means Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

Smith-Midland owns and operates the Facility located at 5119 Catlett Road, Midland, Virginia 22728 (Fauquier County).

2. The DEQ conducted an air compliance inspection of the Facility on October 24, 2006. During the site visit the DEQ observed excess dust emissions coming from the Top 1 Type cement silo bag house during cement loading. The facility was not operating their air pollution control equipment in a manner that would be consistent with air pollution control practices for minimizing emissions; specifically, operating the Top 1 Type cement silo bag house with blown bags. 9 VAC 5-40-20(E)

The un-paved roads throughout the facility were dry. Vehicle movement and wind gusts made the area extremely dusty. The Facility does maintain a water truck; however, it was not in operation during the site visit. The DEQ issued Smith-Midland a Notice of Violation (NOV) on November 21, 2006, for discrepancies noted during the air compliance inspection of October 24, 2006. 9 VAC 5-40-90

3. On October 31, 2006, the Facility submitted a letter to DEQ stating that the bags associated with the Top 1 Type cement silo bag house were replaced on October 25, 2006. During the replacement of the bags the Facility found that the bottom of the bag houses had rusted and leakage was detected. On October 31, 2006, the Facility ordered new bag houses and relief valves. A purchase quote from WAM, Inc. was provided to the DEQ.
4. The Facility contacted the DEQ on November 29, 2006, in response to the NOV. At that time, the Facility stated that they were going to develop a written policy on the use of their water truck to control fugitive dust emissions. Additionally, the Facility expected the delivery of the new bag houses within the week.

SECTION D: Agreement and Order

By virtue of the authority granted it in Va. Code § 10.1-1307 D, §10.1-1309 and § 10.1-1316 C, the Board orders Smith-Midland to perform the actions described in Appendix A of this Order. In addition, the Board orders Smith-Midland, and Smith-Midland voluntarily agrees to pay a civil

charge in the amount of three thousand four hundred and twelve dollars (\$3,412.00) within 30 days of the effective date of the Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

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

SECTION E: Administrative Provisions

The Board may modify, rewrite, or amend the Order with the consent of Smith-Midland for good cause shown by Smith-Midland, or on its own motion after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Smith-Midland by DEQ on November 21, 2006. 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 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 this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities, whether or not arising out of the same or similar facts, for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Smith-Midland admits the jurisdictional allegations contained herein. Smith-Midland neither admits nor denies the specific factual allegations and conclusions of law contained herein
4. Smith-Midland 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. Smith-Midland declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *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 Smith-Midland 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. Smith-Midland 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 other such circumstance. Smith-Midland must show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Smith-Midland 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 this 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 of inability to comply with a requirement of this Order.

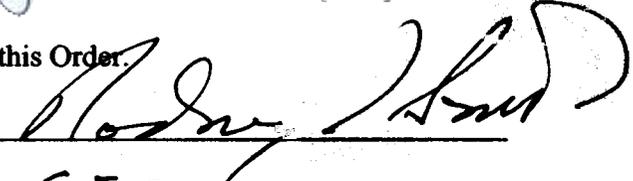
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Smith-Midland. Notwithstanding the foregoing, Smith-Midland agrees to be bound by any compliance date which precedes the effective date of this Order.
- 1 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 Smith-Midland. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Smith-Midland 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, Smith-Midland voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8th day of January, 2007.


Jeffery A. Steers, NVRO Regional Director
Department of Environmental Quality

Smith-Midland voluntarily agrees to the issuance of this Order.

By: 
Title: C.E.O.
Date: 12/26/06

Commonwealth of Virginia
City/County of FAUQUIER

The foregoing document was signed and acknowledged before me this 26th day of

DECEMBER, 2006, by RODNEY I. SMITH, who is
(name)

C.E.O. of Smith-Midland, on behalf of Smith-Midland.
(title)


Notary Public

My commission expires: 7-31-08

**APPENDIX A
SCHEDULE OF COMPLIANCE**

Smith Midland shall:

1. Develop a maintenance schedule and maintain records of all scheduled and non-scheduled maintenance in order to minimize the duration and frequency of excess emissions, with respect to air pollution control equipment and process equipment which affect such emissions. The maintenance schedule shall be provided to the DEQ within 30 days after the effective date of the Consent Order.
2. Provide the DEQ with a copy of the written policy on the use of a water truck to control fugitive dust emissions throughout the facility. The written policy shall be provided to the DEQ within 30 days after the effective date of the Consent Order.