



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

**AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
SMURFIT-STONE CONTAINER ENTERPRISES, INC. dba
SMURFIT-STONE CONTAINER CORPORATION
Registration Number 40126**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1309 and §10.1-1316, between the Air Pollution Control Board and Smurfit-Stone Container Enterprises, Inc., for the purpose of resolving certain alleged violations of environmental law and/or 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. "Air Pollution Control Law" means Va. Code § 10.1-1300 *et seq.*
3. "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.

4. "Smurfit-Stone" means Smurfit-Stone Container Enterprises, Inc., d/b/a Smurfit-Stone Container Corporation, and its affiliates, partners, subsidiaries, and parents. Smurfit-Stone is the owner and operator of a kraft paper mill and is a corporation certified to do business in Virginia.
5. "Facility" means the Smurfit-Stone facility located at 19th and Main Street in King William County, Virginia.
6. "Director" means the Director of the Department of Environmental Quality.
7. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
8. "Order" means this document, also known as a Consent Order.
9. "Permit" means the Prevention of Significant Deterioration (PSD) permit (Registration Number 40126) held by Smurfit-Stone Container Enterprises, Inc., dated April 2, 1984.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Regulations" means the Commonwealth of Virginia State Air Control Board Regulations for the Control and Abatement of Air Pollution.

SECTION C: Findings of Fact and Conclusions of Law

1. Smurfit-Stone operates a boiler, "Power Boiler No. 10" or "PB10" pursuant to the Permit. The Permit incorporates a Carbon Monoxide ("CO") emission limit of 0.23 lb/MMBtu for the Power Boiler No. 10. The Permit requires an initial compliance determination and specifies EPA Reference Method 3 for measuring CO emissions for this determination.
2. Compliance tests conducted by the Facility using EPA Method 3 in September 1982 and December 2006 appeared to demonstrate that the Facility was in compliance with its CO emission limitation.
3. In November 2005, Smurfit-Stone installed a monitoring system for CO on Power Boiler No. 10 to assist the boiler operators in improving boiler efficiency. This monitor does not reflect what would be determined by EPA Method 3.
4. Smurfit-Stone notified PRO in July 2006 that readings from the CO monitor (based on EPA Method 10) periodically are greater than 0.23 lb/MMBtu.
5. On August 17, 2006 the Facility submitted electronic documentation from the non-certified CO monitor to DEQ.

6. The CO monitor was certified as requested by DEQ pursuant to the procedures of Appendix F to 40 CFR Part 60 on December 12, 2006.
7. As requested, Smurfit provided DEQ with documentation of CO emissions on a monthly basis from August 17, 2006 through June 5, 2007. The monitor has continued to indicate CO emissions periodically exceed 0.23 lb/MMBtu (based on EPA Method 10).
8. DEQ issued a Notice of Violation ("NOV") on April 16, 2007. The NOV indicated that CO emissions from the Power Boiler No. 10 (based on EPA Method 10) exceeded the emission limitations, as set by 9 VAC 5-80-1985 and 9 VAC 5-50-260.
9. The following additional issues were identified upon further review of Facility records;
 - a. CO emissions from the Power Boiler No. 10 were not controlled so as to minimize CO emissions set forth by 9 VAC 5-80-1985 and 9 VAC 5-50-20;
 - b. Smurfit-Stone reported to DEQ that it was recording readings that exceeded the CO emission limit in its permit, these readings were not reported until some months after the monitor was installed. Permit (condition Part II.6), 9 VAC 5-80-1985, and 9 VAC 5-50-20.
10. On April 23, 2007, DEQ received a PSD permit application from Smurfit-Stone to modify the Permit's PB10 CO emissions limit and update the applicable method for measuring compliance.
11. On May 3, 2007, a meeting was held between DEQ staff and Smurfit-Stone representatives to discuss the April 16, 2007 NOV, at which time both DEQ and Smurfit-Stone agreed that there may have been no increase in the emissions from PB10.
12. DEQ and Smurfit agree that a permit modification is necessary to establish a new CO limit for PB10. DEQ and Smurfit have agreed to this consent order to provide interim limitations during the time the permit modification is being processed.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316(C), orders Smurfit-Stone, and Smurfit-Stone voluntarily agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Smurfit-Stone, and Smurfit-Stone voluntarily agrees, to pay a civil charge of **\$45,000** within 30 days of the effective date of the Order in settlement of the alleged violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:
Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218
Payment shall include the Federal Tax Identification Number for the Facility.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Smurfit-Stone, for good cause shown by Smurfit-Stone, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves the alleged violations specifically identified herein and in the Notice of Violation issued to Smurfit-Stone by DEQ on April 16, 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 Smurfit-Stone 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, Smurfit-Stone admits the jurisdictional allegations, and does not admit nor deny but agrees not to challenge, the factual findings, and conclusions of law contained herein.
4. Smurfit-Stone 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. Smurfit-Stone 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 Smurfit-Stone 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. Smurfit-Stone 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. Smurfit-Stone shall show that such circumstances were beyond its control and not due to a lack of

good faith or diligence on its part. Smurfit-Stone 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.

Notice shall satisfy this requirement if made to the DEQ representative designated herein by telephone, facsimile, or electronic mail, followed by written notice within three business days. Failure to give notice by telephone, facsimile, or electronic mail 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 Smurfit-Stone. Notwithstanding the foregoing, Smurfit-Stone 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 Smurfit-Stone. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Smurfit-Stone 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, Smurfit-Stone voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 12/18/07.

Gerard Seeley Jr.
Gerard Seeley Jr., Regional Director
Department of Environmental Quality

Smurfit-Stone voluntarily agrees to the issuance of this Order.

By: [Signature]

Date: 12/18/2007

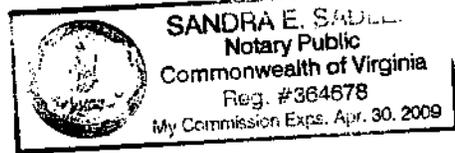
Commonwealth of Virginia
City/County of King William

The foregoing document was signed and acknowledged before me this 18th day of December, 2007, by Sandra E. Saddle, who is
(name)

Executive Sec. & Notary of Smurfit-Stone Container Enterprises, Inc., on behalf of the
(title)
Corporation.

Sandra E. Saddle
Notary Public

My commission expires: April 30, 2009



APPENDIX A

1. No later than January 21, 2008 Smurfit- Stone shall submit an amendment to the Prevention of Significant Deterioration permit application dated April 20, 2007, to request that the continuous emission monitor referenced in this Order be incorporated into enforceable operating permit as the compliance determination method for CO emissions.
2. During the period beginning with the effective date of this Order and lasting until the Permit modification is issued Smurfit-Stone shall meet the following emission limit, monitoring, and recordkeeping requirements:
 - a. Smurfit- Stone shall not exceed an interim CO emission limit of 362 lb/hr from the PB10, based on a 30 day rolling average. This interim limit does not establish the PSD permit CO limit to be determined pursuant to the permit application process.
 - b. Smurfit-Stone shall abide by the following monitoring and recordkeeping requirements (in addition to those in the current permits):
 - i. The PB10 CO emissions shall be monitored and recorded by a continuous emission monitor. The monitoring device shall be installed, maintained, calibrated and operated in accordance in accordance with 40 CFR 60.13 and 40 CFR 60 Appendices A, B, and F which shall include, the manufacturer's written requirements or recommendations. The monitoring device shall be provided with adequate access for inspection and shall be in operation when the PB10 is operating.
 - ii. Smurfit-Stone shall maintain records of monthly emissions for CO from the PB10 using recorded emissions data maintained by the data acquisition system associated with PB10 to verify compliance with the 362 lb/hr CO emissions limitation.
 - iii. Smurfit-Stone shall maintain records of the operation and monitoring records for the PB10. The records shall be consistent with the existing permit requirements and shall include monitoring CO emissions utilizing the certified CO emissions monitor, flow monitor(s), and heat input.
 - iv. Smurfit-Stone shall submit documentation of CO and Nitrogen Oxides (as NO_x) emissions, steam production and heat input in both lbs/hr and lbs/mmbtu from the monitoring devices installed on PB10 to DEQ on a monthly basis.

3. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order shall be sent to:

Jennifer Hoeffner
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060