



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Francis L. Daniel  
Regional Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
SOUTHERN CONCRETE PRODUCTS, LLC  
FOR  
MONEY POINT FACILITY  
Registration No. 60200**

## **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 Southern Concrete Products, LLC, 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Facility" means the Southern Concrete Products, LLC – Money Point facility, located at 3900 Shannon Street, Chesapeake, Virginia that operates a concrete block plant and pier operations.

5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
6. "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.
7. "Permit" means a New Source Review Permit to construct and operate a concrete block plant and pier operations facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Southern Concrete on April 6, 1990 (amended April 13, 2007).
8. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 through 80.
9. "Southern Concrete" means Southern Concrete Products LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. Southern Concrete is a "person" within the meaning of Va. Code § 10.1-1300.
10. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*), of Title 10.1 of the Va. Code.

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

1. Southern Concrete owns and operates the Facility in Chesapeake, Virginia at which Southern Concrete unloads garnet sand, road salt, distressed cement from ships, and transfers cement to tanker trucks.
2. Southern Concrete was subject to the Permit which includes storage silos, conveyors, a weigh hopper/mixer, molding and curing and unloading of distressed cement from ships using a clamshell bucket.
3. On or about June 1, 2009, Southern Concrete contacted DEQ to report an apparent violation of State Air Pollution Control Law, the Permit, and the Regulations. Reportedly, Southern Concrete constructed a new emissions point screw conveyor for cement through the side of a building to load outside cement tankers. Originally, Southern Concrete planned to construct the new screw conveyor inside the building, which might not have required an air permit. Due

to size constraints once the equipment arrived from overseas, Southern Concrete installed part of the screw conveyor outside of the building.

4. On August 18, 2009, DEQ compliance staff conducted a Partial Compliance Evaluation at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the inspection and follow-up information, DEQ staff made the following observation:

DEQ staff observed a cement transfer system for filling tanker trucks had been installed and operated that was not listed in the Permit.

5. On August 19, 2009, DEQ issued a Request for Corrective Action to Southern Concrete requesting Southern Concrete to submit an air permit application for the cement transfer system.
6. On October 14, 2009, Southern Concrete submitted an air permit application to DEQ for the cement transfer system for filling tanker trucks. A review of Southern Concrete's air permit application by DEQ staff indicated that the cement transfer system for filling tanker trucks was subject to the Regulations and required an air permit.
7. On January 13, 2010, DEQ modified the Permit to include the cement transfer system for filling tanker trucks. A subsequent Permit amendment to the correct facility name was made on February 2, 2010.
8. On February 2, 2010, DEQ staff conducted a Partial Compliance Evaluation of the DEQ Facility record for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the inspection, follow-up information and Permit modification and amendment, DEQ staff made the following observations:

The cement transfer system for filling tanker trucks had been installed and operated without first acquiring a permit or providing proper notification.

9. 9 VAC 5-80-1120(A) states that, "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."
10. 9 VAC 5-80-1210 (D) states that, "Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section."

11. 9 VAC 5-50-50 (A) requires that, any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board for the date of commencement of construction, initial startup, and actual date of startup for a new or modified source.
12. On March 15, 2010, based on the August 18, 2009 and February 2, 2010, inspections and permit modification issued January 13, 2010, as amended on February 2, 2010; the DEQ issued a NOV to Southern Concrete for the violations described in paragraphs C.3 through C.10, above.
13. Based on the results of the August 18, 2009 and February 2, 2010 inspection and modification of the Permit on January 13, 2010 (as amended on February 2, 2010), the Board concludes that Southern Concrete has violated 9 VAC 5-80-1120(A), 9 VAC 5-80-1210(D) and 9 VAC 5-50-50(A) of the Regulations as described in paragraph C.3 and C.10 above.
14. DEQ modified Southern Concrete's Permit on January 13, 2010 (as amended on February 2, 2010) and therefore the violations described in paragraphs C.3 through C.10, above, have been corrected.

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

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and 1316, the Board orders Southern Concrete and Southern Concrete agrees to pay a civil charge of \$6,292.00 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

Southern Concrete shall include its Federal Employer Identification Number (FEIN) 54-2014152 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 the Order with the consent of Southern Concrete good cause shown by Southern Concrete, 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 the purposes of this Order and subsequent actions with respect to this Order, Southern Concrete admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Southern Concrete 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. Southern Concrete declares it has received fair and due process under the Administrative Process Act, Va. Code 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 Southern Concrete 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. Southern Concrete 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. Southern Concrete shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Southern Concrete 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 within 24 hours and in writing within three business days, of learning of any condition above, which Southern Concrete intends 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 Southern Concrete. Nevertheless, Southern Concrete 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) Southern Concrete 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 Southern Concrete.

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

And it is so ORDERED this 8<sup>th</sup> day of October, 2010.

Francis L. Daniel

Francis L. Daniel, Regional Director  
Department of Environmental Quality

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

Date: October 5, 2010 By: PETER W. SCHMIDT MANAGER  
(Person) (Title)

of Southern Concrete Products, LLC.

**Commonwealth of Virginia**

City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 5 day of October, 2010, by Peter W. Schmidt, who is

Manager of Southern Concrete Products, LLC. on behalf of Southern Concrete Products, LLC.



Jennifer M R Angel  
Notary Public

212045

Registration No.

My commission expires: April 30, 2012

Notary Seal: