



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
SUPERIOR PAVING CORPORATION
FOR
THE FREDERICKSBURG PLANT
Registration No. 41041**

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 Superior Paving Corporation, regarding Superior Paving Corporation 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 Superior Paving Corporation, Fredericksburg Plant, located at 132 Powell Lane in Stafford County, Virginia (also known as the 'home base' for this portable plant).
5. "FCE" means a full compliance evaluation by DEQ staff.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. "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.
9. "Permit" means a Minor New Source Review permit to construct and operate a portable recycled asphalt product plant which was issued under the Virginia Air Pollution Control Law and the Regulations to Superior Paving Corporation on July 5, 2005.
10. "RAP" means recycled asphalt pavement.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Superior Paving" means Superior Paving Corporation a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Superior Paving Corporation is a "person" within the meaning of Va. Code § 10.1-1300.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "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. Superior Paving owns and operates the Facility in Stafford County, Virginia. The Facility is a portable recycled asphalt pavement (RAP) plant. The Facility is the subject of the Permit which allows Superior Paving to construct and operate the RAP plant at its 'home base' without time restriction and relocation to other sites within Virginia for no more than 18 months without written approval from DEQ.

2. On May 23, 2016, Department staff conducted an FCE of the portable RAP unit at its home base, 132 Powell Lane in Stafford County, Virginia, for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:
 - a. The RAP unit had been moved to 8747 Vulcan Lane in Manassas, Virginia on October 26, 2011. After a review of Facility files, DEQ staff noted that no written approval was given to Superior Paving to operate the RAP at this location in excess of 18 months.
 - b. After a review of Facility files, DEQ staff noted that throughput records showed that Superior Paving reported a throughput of 82,869.07 tons of material for the 12 month period from May 2015 through April 2016.
3. Permit Condition 12 (Operation of Portable Facilities) states that the portable RAP plant may not operate at any single temporary site for a period in excess of eighteen months without written approval from the DEQ. (9 VAC 5-170-160).
4. Permit Condition 4 (Processing) states that the RAP plant shall process no more than 75,000 tons of RAP per year, calculated monthly as the sum of each consecutive twelve month period. (9 VAC 5-80-1180).
5. On May 31, 2016, based on the observations noted during the FCE, the Department issued Notice of Violation No. ANRO000435 to Superior Paving for the violations described in paragraphs C(1) through C(4), above.
6. On June 28, 2016, Department staff met with representatives of Superior Paving to discuss the violations and procedures that Superior Paving has implemented to ensure future violations do not occur.
7. Based on the results of May 23, 2016 FCE, and the June 28, 2016, meeting, the Board concludes that Superior Paving has violated Permit Condition 4 and 12, as described in paragraphs C(1) through C(4), above.
8. Superior Paving submitted a permit application to DEQ which was received on June 22, 2016, that requests a permit modification that would resolve the aforementioned violations.
9. In order for Superior Paving to complete its return to compliance, DEQ staff and representatives of Superior Paving have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Superior Paving Corporation, and Superior Paving Corporation agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$8,585.85 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

Superior Paving Corporation shall include its Federal Employer Identification Number (FEIN) 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Superior Paving Corporation shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Superior Paving Corporation for good cause shown by Superior Paving Corporation, 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 purposes of this Order and subsequent actions with respect to this Order only, Superior Paving Corporation admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Superior Paving Corporation 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. Superior Paving Corporation declares it has received fair and due process under the Administrative Process Act 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 Superior Paving Corporation 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. Superior Paving Corporation 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Superior Paving Corporation shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Superior Paving Corporation 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.

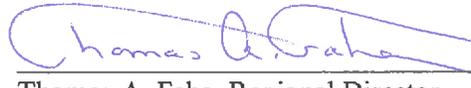
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any 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 Superior Paving Corporation. Nevertheless, Superior Paving Corporation 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. The Director or his designee terminates the Order after Superior Paving Corporation has completed all of the requirements of the Order;
 - b. Superior Paving Corporation 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
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Superior Paving Corporation.

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

And it is so ORDERED this 30th day of September, 2016.


Thomas A. Faha, Regional Director
Department of Environmental Quality

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Superior Paving Corporation voluntarily agrees to the issuance of this Order.

Date: 9/30/16 By: Todd Atkins, Director of Safety
(Person) (Title)
[Superior Paving Corporation]

Commonwealth of Virginia
City/County of Prince William

The foregoing document was signed and acknowledged before me this 30th day of September, 2016, by Todd Atkins who is Director of Safety of Superior Paving Corporation, on behalf of the corporation.

Dominic M. Ellis

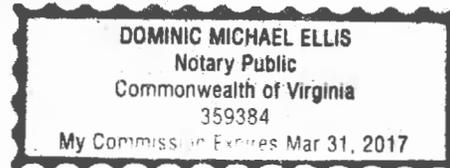
Notary Public

359384

Registration No.

My commission expires: 3/31/2017

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Superior Paving Corporation shall:

1. Respond to any requests for additional information regarding the Permit Application submitted by Superior Paving on June 22, 2016, within the time frame specified by DEQ in permitting correspondence.

2. Certification of Documents and Reports

In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, Superior Paving Corporation shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

3. DEQ Contact

Unless otherwise specified in this Order, Superior Paving shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
Attention Enforcement
13901 Crown Court
Woodbridge, VA 22193