



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTH CENTRAL REGIONAL OFFICE

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Preston Bryant  
Secretary of Natural Resources

David K. Paylor  
Director

Thomas L. Henderson  
Regional Director

**May 26, 2006**

## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO**

**C.A. Padgett Enterprises  
Registration Number: 31044**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1300 and 10.1-1185, between the State Air Pollution Control Board and C.A. Padgett Enterprises for the purpose of resolving certain 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. "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. "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. “C.A. Padgett” means C.A. Padgett Enterprises, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Facility” means the C.A. Padgett Enterprises facility, located in Campbell County, Virginia.
8. “Regulations” means the “State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution,” which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).

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

1. The facility is a batch mix asphalt plant with an air permit dated July 24, 2003. Condition #24 of the permit states the following:

Stack Test - Initial performance tests shall be conducted for filterable particulate matter from the batch mix asphalt plant’s fabric filter to determine compliance with the emission limits contained in Condition 15. The test shall be performed within 60 days after achieving the maximum production rate at which the facility will be operated, but in no event later than 180 days after start-up of the permitted facility. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5-50-30. The permittee shall submit a test protocol at least 30 days prior to testing. Two copies of the test results shall be submitted to the Lynchburg Office within 45 days after test completion.  
(9 VAC 5-50-30 and 9 VAC 5-80-1180)

2. A Consent Order was executed on April 1, 2005 for failing to meet the stack testing requirement outlined in condition 24 of the permit. The Consent Order required C.A. Padgett to pay a civil penalty of \$ 4,523.00, install a particulate matter (PM) monitor as a SEP, submit a stack test protocol, conduct a stack test demonstrating compliance with condition 15 of the permit, and submit a Form 7 Application to amend the permit.
3. Section D, item 5 of the Consent Order stated that a stack test protocol shall be submitted 30 days prior to testing. A stack test protocol was submitted to SCRO on April 25, 2005. Testing was scheduled for June 12, 2005 after the PM monitor was installed.
4. On June 16, 2005 a stack test was performed to demonstrate compliance with the permit and Consent Order. The PM monitor was installed; however, the software was not. C.A. Padgett was made aware that additional testing would be required to calibrate the monitor with the software.
5. The stack test results were received on July 21, 2005. C.A. Padgett passed the grains per dry standard cubic foot (gr/dscf) limit but did not pass the pounds per hour (lbs/hr) limit for PM outlined in condition 15 of the permit dated July 24, 2003. The three run average was 7.681 lbs/hr of PM. Condition 15 of the permit states the following:

Emission Limits – emissions from the operation of the rotary dryer filter exhaust stack shall not exceed the limits specified below:

Particulate Matter (filterable)	0.04 gr/dscf
Particulate Matter, including condensable matter	5.88 lbs/hr
PM-10, including condensable matter	3.78 lbs/hr
Sulfur Dioxide	40.06 lbs/hr
Nitrogen Oxides	16.80 lbs/hr
Carbon Monoxide	56.00 lbs/hr
Volatile Organic Compounds (9 VAC 5-50-260)	1.15 lbs/hr

6. On August 25, 2005 a stack test was conducted to calibrate the PM monitor.
7. The stack test results were received on September 27, 2005. C.A. Padgett passed the gr/dscf limit, but failed to demonstrate compliance with the pounds per hour (lbs/hr) limit for PM outlined in condition 15 of the permit, as stated in item 5. The three run average was 7.614 lbs/hr of PM.
8. On September 23, 2005 C.A. Padgett submitted the Form 7 Application required by Section D condition 7 of the Consent Order, executed on April 1, 2005.
9. On November 2, 2005, Dave Skelly, Air Permit Engineer Sr., sent the application back to C.A. Padgett and requested additional information, which to date, has not been received.
10. On November 7, 2005 a meeting was held between C.A. Padgett and the Department of Environmental Quality to discuss the lb/hr issue. C.A. Padgett was given 60 days to conduct maintenance on the baghouse and complete another stack test to demonstrate compliance with the lb/hr limit outlined in condition 15 of the July 24, 2003 permit.
11. A stack test protocol was then received in SCRO on January 5, 2006, for a stack test to demonstrate compliance with the PM lbs/hr limit in condition 15 of the July 24, 2003 permit. This protocol indicated that the required testing would be performed at the facility on March 14, 2006.
12. On March 10, 2006 C.A. Padgett notified the Department of Environmental Quality that the modifications to create more air flow in the stack had not been completed and that the test would be postponed. The stack test was rescheduled for March 24, 2006.
13. On March 24, 2006 the stack test was cancelled because the stack could not pass method 1 testing. The stack modifications resulted in a decreased distance from the sampling ports to the closest flow disturbance than what the test method requires. The stack test was rescheduled for April 7, 2006 after the stack modifications/corrections could be made.
14. On April 7, 2006, the stack test was not completed due to two equipment breakdowns, a power failure, and a fan motor malfunction as a result of the power failure.

15. On April 13, 2006, Air Monitoring Specialist, Inc. submitted a letter stating that the stack test is rescheduled for May 18, 2006.
16. As of April 17, 2006 C.A. Padgett has failed to meet Section D conditions 3, 6, and 7 of the Consent Order executed on April 1, 2005. Therefore, an NOV was issued on April 17, 2006 to address the items listed below.
17. Condition 3 of Section D states; C.A. Padgett shall within 30 days provide a completion report including actual SEP costs to the Department of Environmental Quality. This completion report including SEP cost has not been provided.
18. Condition 6 of Section D requires stack testing to demonstrate compliance with condition 15 of the July 24, 2003 permit. C.A. Padgett has not demonstrated compliance with the lbs/hr limit outlined in condition 15 of the permit.
19. Condition 7 of the Consent Order requires that C.A. Padgett, within 120 days of the effective date of the order, submit a completed Form 7 Application for the installation of the PM Monitor. On September 23, 2005 C.A. Padgett submitted a Form 7, but this was withdrawn mutually on November 1, 2005. C.A. Padgett was asked to resubmit with more information, but to date this has not occurred and therefore condition 7 of the Consent Order has not been met.
20. A meeting was held with C.A. Padgett on April 28, 2006 to discuss the NOV issued on April 17, 2006.
21. As a result of the meeting held on April 28, 2006, C.A. Padgett provided a completed Form 7 Application and SEP Completion Report to meet Conditions 3 and 7 of the Consent Order executed on April 1, 2005.
22. C.A. Padgett submitted a letter dated April 26, 2006 responding to the NOV issued on April 17, 2006. This letter outlined what steps have been taken to resolve conditions 3, 6 and 7 of the Consent Order executed April 1, 2006.
23. C.A. Padgett submitted a letter dated May 1, 2006 outlining the steps taken to resolve problems with stack testing and days the plant operated since April 1, 2005.

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

Accordingly, the Board, by virtue of the authority of §10.1-1307 D., §10.1-1309, §10.1-1184, §10.1-1316 C., and §10.1-1186.2 orders and C.A. Padgett agrees that:

1. C.A. Padgett shall make two payments to the Department totaling \$13,796.00 within 60 days of the effective date of this Order. Payment shall be by check, certified check, money order, or cashier check payable to “Treasurer of the Commonwealth of Virginia” and sent to:

Receipts Control  
Department of Environmental Quality  
PO Box 10150  
Richmond, Virginia 23240

C.A. Padgett shall include its Federal Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this paragraph.

2. Source is to demonstrate compliance with condition 15 of the July 24, 2003 permit. A letter was submitted to DEQ on April 13, 2006 that states that a stack test will be performed on May 18, 2006.
3. Within 45 days of the stack test, results shall be submitted to the Department.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of C.A. Padgett, for good cause shown by C.A. Padgett, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to C.A. Padgett by DEQ on March 30, 2004, and July 29, 2004. 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, C.A. Padgett admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. C.A. Padgett 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. C.A. Padgett 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 C.A. Padgett 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. C.A. Padgett 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. C.A. Padgett shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. C.A. Padgett 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.

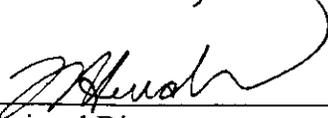
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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 C.A. Padgett. Notwithstanding the foregoing, C.A. Padgett 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 C.A. Padgett. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve C.A. Padgett, 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 C.A. Padgett voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 8, 2006.

  
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Regional Director  
Department of Environmental Quality

C.A. Padgett Enterprises voluntarily agrees to the issuance of this Order.

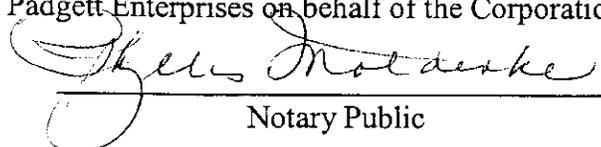
By:   
\_\_\_\_\_  
Date: 6-8-06

Commonwealth of Virginia  
City/County of CAMPBELL

The foregoing document was signed and acknowledged before me this 8<sup>th</sup> day of

JUNE, 2006, by CHARLIE A. PADGETT, who is  
(name)

OWNER of C.A. Padgett Enterprises on behalf of the Corporation.  
(title)

  
\_\_\_\_\_  
Notary Public

My commission expires: APRIL 30, 2008