



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

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Robert G. Burnley  
Director

Steven A. Dietrich  
Regional Director

### **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO GENERAL SHALE BRICK, INC.**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and General Shale Brick, Inc., for the purpose of resolving certain violations of State Air Pollution Control Laws and 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. "General Shale Brick, Inc." means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Facility" means the structure located at 770 Webster Road, Blue Ridge, Virginia 24064.
8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means the Stationary Source Permit to Construct and Operate, dated December 30, 2003.
10. "O&M" means operations and maintenance.

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

1. General Shale Brick, Inc. owns and operates a facility at Webster Road in Blue Ridge, Virginia. This facility has a stationary source permit, which allows the operation of a brick manufacturing facility.
2. On April 14, 2005, General Shale Brick, Inc. sent an electronic e-mail informing WCRO-DEQ staff that the Kiln #35 permitted annual brick tonnage throughput limit had been exceeded by 1,524 tons during 2004. This exceedance of brick tonnage for 2004 was reported by General Shale Brick, Inc. to have occurred as the result of an error made in the December 30, 2003 NSR permit application.
3. A letter from General Shale Brick, Inc. dated April 25, 2005 explained what had occurred and that the permit application did not take into account reject or off-spec. brick when providing their projected annual production estimates. The letter indicated that General Shale Brick, Inc. planned to submit a new permit application to modify the Kiln #35 annual throughput limit.
4. On May 9, 2005, DEQ issued a Notice of Violation to General Shale Brick, Inc. for alleged violations of Condition 9 of the December 30, 2003 New Source Review permit and Condition IV. A.I, of the June 14, 2001 Title V Permit that limits Kiln #35 annual brick production throughput to 122,640 tons.
5. On May 10, 2005, General Shale Brick, Inc. sent a letter to WCRO informing the Department that Kiln #35 annual brick production at the Webster Plant had been limited starting April 27, 2005, to stay below the existing permitted annual brick throughput limit
6. A permit application to modify the Kiln #35 annual brick production in the existing New Source Review permit and Title V permit was submitted by General Shale Brick, Inc. on May 2, 2005 and deemed complete on May 25, 2005.

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

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, orders General Shale Brick, Inc., and General Shale Brick, Inc. agrees to pay a civil charge of **\$1,238.00** in settlement of the violations cited in this Order.

1. **\$1,238.00** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

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

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of General Shale Brick Inc., for good cause shown by General Shale Brick, Inc., 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 alleged in the Notice of Violation issued to General Shale Brick, Inc. by DEQ on May 9, 2005. 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, General Shale Brick, Inc. admits the jurisdictional allegations, but does not admit the factual allegations or legal conclusions of law contained herein. DEQ and General Shale Brick Inc. agree that the actions undertaken by General Shale Brick, Inc. in accordance with this Consent Order do not constitute an admission of liability by General Shale Brick, Inc.. General Shale Brick, Inc. does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the Findings of Facts and Conclusions of Law contained in Section C of this Order.
4. General Shale Brick, Inc. 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. General Shale Brick, Inc. declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the 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 General Shale Brick, Inc. 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. General Shale Brick, Inc. 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. General Shale Brick, Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. General Shale Brick, Inc. 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 General Shale Brick, Inc..
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 General Shale Brick, Inc.. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve General Shale Brick, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signatures below, General Shale Brick, Inc. agree to the issuance of this Order.

And it is so ORDERED this 24<sup>th</sup> day of JUNE, 2005.

Steven A. Dietrich  
 FOR Robert G. Burnley, Director  
 Department of Environmental Quality

General Shale Brick, Inc. agrees to the issuance of this Order.

By: [Signature]  
 Date: JUNE 13, 2005

~~Commonwealth of Virginia~~ State of Tennessee  
~~City~~ County of Washington

The foregoing document was signed and acknowledged before me this 13<sup>th</sup> day of June, 2005, by Dave McNees, who is (name)

Director of Environment of General Shale Brick, Inc., on behalf of the Corporation.  
 (title)

Brenda H. Leonard  
 Notary Public

My commission expires: July 28, 2008

