



# 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 The Quikrete Companies

#### 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 The Quikrete Companies, 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. "The Quikrete Companies" means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the structure at Meadowoods Trail located in Martinsville, Virginia.

8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means the permit to modify and operate a pre-mixed aggregate products packaging facility, which became effective December 15, 1999.
10. "O&M" means operations and maintenance.

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

1. The Quikrete Companies owns and operates a facility in the Martinsville, Virginia. This facility is the subject of stationary source permit, which allows the modification and operation of a pre-mixed aggregate products packaging facility.
2. DEQ has noted an apparent violations of the Air Pollution Control Law and Regulations. These problems, noted in a Notice of Violation issued by DEQ on May 12, 2004, include:
  - Staff conducted an investigation of a complaint received on May 5, 2004. The complainant stated that there was heavy dust from the process. Staff met with Quentin Anderson on May 10, 2004. Staff observed heavy opacity from the baghouse stack. The source stated that they were aware of the heavy opacity and that they did not have any replacement bags for the baghouse. The source stated that bags would not be received until the end of May 2004. The source has failed to maintain equipment per 9 VAC 5-50-20E, which states: "At all times, including periods of startup, shutdown, sootblowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions."
3. The Quikrete Companies has corrected the problem cited in the Notice of Violation. The source submitted a letter dated May 20, 2004 stating that the worn bags in the baghouse have been replaced and that additional bags for inventory would arrive by June 1, 2004.

### **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, and after consideration of the factors set forth in Va. Code § 10.1-1186.2, orders The Quikrete Companies, and The Quikrete Companies agrees, to perform the actions described below and in Appendices A of this Order. In addition, the Board orders The Quikrete Companies, and The Quikrete Companies voluntarily agrees to pay a civil charge of \$5,180 in settlement of the violations cited in this Order. The 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

The payment shall include The Quikrete Companies's Federal ID number or Social Security Number if The Quikrete Companies does not have a Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of The Quikrete Companies, for good cause shown by The Quikrete Companies, 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 The Quikrete Companies by DEQ on May 12, 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, The Quikrete Companies admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Quikrete Companies 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. The Quikrete Companies 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 The Quikrete Companies 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. The Quikrete Companies 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. The Quikrete Companies shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Quikrete Companies 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 The Quikrete Companies. Notwithstanding the foregoing, The Quikrete Companies 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 The Quikrete Companies. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve The Quikrete Companies 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, The Quikrete Companies voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 6<sup>th</sup> day of DECEMBER, 2004.

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

The Quikrete Companies voluntarily agrees to the issuance of this Order.

By: Michael Scutella

Date: 11-16-04

Commonwealth of Virginia

City/County of Manassasville / Henry County

The foregoing document was signed and acknowledged before me this 16<sup>th</sup> day of November, 2004, by Michael Scutella, who is  
(name)

General Manager of The Quikrete Companies, on behalf of the Corporation.  
(title)

James A. Mayo  
Notary Public



My commission expires: 10/05/09

## APPENDIX A

The Quikrete Companies shall:

1. Within 30 days of the effective date of the Order, The Quikrete Companies shall submit documentation to the DEQ that operators have been trained in the proper operation and maintenance of the baghouses and dust collection system.
2. Within 30 days of the effective date of the Order, The Quikrete Companies shall submit a revised Operating and Maintenance Procedure for the baghouses and dust collection system.
3. Within 30 days of the effective date of the Order, The Quikrete Companies shall obtain an inventory of replacement baghouse bags and submit documentation of the inventory to the DEQ.