



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ARMSTRONG, GREEN and EMBREY, INC. FOR REMINGTON MULCH

Registration No. 41060

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 Armstrong, Green and Embrey, Inc., regarding Remington Mulch, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Armstrong" means Armstrong, Green and Embrey Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Armstrong is a "person" within the meaning of Va. Code § 10.1-1300.
2. "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.
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, as described in Va. Code § 10.1-1185.

5. "Facility" means Armstrong, Green, and Embrey Incorporated's, Remington Mulch facility, located at 24043 Rapidan Road in Mitchells, Virginia which is located in Culpeper County, Virginia.
6. "FCE" means a full compliance evaluation by DEQ staff.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
9. "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.
10. "Permit" means a Stationary Source Permit to Operate, a wood mulch and compost manufacturing facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Armstrong, Green, and Embrey Inc., d/b/a as Remington Mulch on June 3, 2010.
11. "PCE" means a partial compliance evaluation by DEQ staff.
12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
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. Armstrong, owns and operates the Facility in Mitchells, Virginia. The Facility is the subject of the Permit, which allows Armstrong to operate a wood mulch and compost manufacturing facility.
2. On August 19, 2011, Department staff conducted a FCE of the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. At the time of the FCE, Armstrong informed DEQ that it had purchased an additional Grinder, and inquired as to what actions it would need to take to have the unit added to its Permit. DEQ staff informed Armstrong during the FCE that it should contact DEQ permitting staff prior to bringing the equipment onsite.

3. On December 15, 2011, Department staff conducted a PCE of the Facility record 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) On September 21, 2011, and October 14, 2011, DEQ received information from Armstrong stating that additional equipment had been purchased in addition to its previously permitted equipment, and had constructed and operated a 1000 horsepower Diamond Z 1463 Grinder (Grinder) in February 2011 and two ReTech 627 Screeners (Screeners) in September 2011.
4. 9 VAC 5-80-1120A 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.
5. 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."
6. 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 no later than 30 days after such date.
7. On December 21, 2011, based on the August 19, 2011, FCE, and December 15, 2011 PCE, the Department issued a Notice of Violation to Armstrong for the violation described in paragraphs C(2) through C(6), above.
8. On April 2, 2012, DEQ and Armstrong met to discuss outstanding compliance issues and the enforcement action. During this meeting, Armstrong informed DEQ that the Diamond Z 1463 Grinder was acquired as a replacement for an older grinder, and that the older grinder had been removed from service.
9. Based on the August 19, 2011 and December 15, 2011 evaluations and documentation submitted on September 21, 2011 and October 14, 2011, the Board concludes that Armstrong has violated 9 VAC 5-80-1120A and 9 VAC 5-50-50 (A), as described in paragraphs C(4) through C(6) above.
10. In order for Armstrong to return to compliance, Department staff and representatives of Armstrong 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 Armstrong, and Armstrong agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$6,482.29 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

Armstrong 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Armstrong for good cause shown by Armstrong, 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, Armstrong admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Armstrong 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. Armstrong 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 Armstrong 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. Armstrong 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. Armstrong shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Armstrong 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 Armstrong. Nevertheless, Armstrong 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 Armstrong has completed

all of the requirements of the Order;

- b. Armstrong 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 Armstrong.

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

And it is so ORDERED this 11th day of June, 2012


Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

Consent Order

Armstrong, Green, and Embrey, Inc.; Registration No. 41060

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Armstrong, Green, and Embrey, Inc. voluntarily agrees to the issuance of this Order.

Date: 6/6/12 By: [Signature], V.P.
(Person) (Title)
Armstrong, Green, and Embrey, Inc.



Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 6th day of June, 2012, by Frank Ross Jones Jr. who is VP of Armstrong, Green, and Embrey, Inc. on behalf of the corporation.

[Signature]
Notary Public
351456
Registration No.

My commission expires: 9/30/13

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

1. Armstrong shall:

Submit all appropriate Permit Applications to DEQ by June 1, 2012 for equipment that is the subject of this Order. Armstrong shall respond to any requests for additional information regarding said applications within 2 weeks of receipt of DEQ comments.

2. Certification of Documents and Reports

In accordance with 9 VAC 5-20-230(A), in all documents or reports, including, without limitation, the SEP Completion Report, submitted to DEQ pursuant to this Consent Order, Armstrong 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, Armstrong 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**