

**AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
S. B. Cox Incorporated
Permit No. 51258**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1309 and §10.1-1316, between the Air Pollution Control Board and S. B. Cox Incorporated, 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. “S. B. Cox” means S. B. Cox Incorporated certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Facility” means the S. B. Cox Incorporated located at 1920 Anderson Highway in Powhatan County, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means Construct and Operate Permit, which became effective June 19, 1997.
10. “O&M” means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. S. B. Cox owns and operates a Concrete Plant in Powhatan County, Virginia. This facility is the subject of a Construct and Operate permit issued on June 19, 1997.
2. On August 28, 2003, DEQ Regional Office staff performed an air compliance inspection at S. B. Cox .
3. On January 9, 2004, PRO issued a Notice of Violation to S. B. Cox identifying an apparent violation of the Air Pollution Control Law and regulations. The Notice of Violation issued by DEQ, cited the following alleged violations:
 - a. Condition 3 of the June 19, 1997, permit requires fabric filter(s) to be installed to capture particulate emissions from the cement/flyash storage silos, weigh batcher, and from the loading of the mixing trucks through the loading boot. The fabric filter(s) are to be equipped with a device to continuously measure the differential pressure drop across each fabric filter(s). During the onsite inspection the fabric filter(s) were not operating in a manner consistent with good air pollution control practices to minimize emissions. This is a potential violation of 9 VAC 5-80-1100 and 9 VAC 5-50-260.
 - b. Condition 9 of the June 19, 1997, permit requires that visible emissions from any fabric filter, vent or exhaust duct to not exceed five percent opacity as determined by EPA Method 9 (reference 40 CFR 60, Appendix A). During the onsite inspection the visible emissions were above permit limits during loading of silo with cement. This is a potential violation of 9 VAC 5-50-20.
 - c. Condition 10 of the June 19, 1997, permit requires that visible emissions from stockpiles, storage bins, batchers, hoppers, mixers and conveyor transfer points shall not exceed ten percent opacity. During the onsite

inspection the visible emissions were above permit during the operation of the mixers. This is a potential violation of 9 VAC 5-50-260 and 9 VAC 5-50-410.

- d. Condition 15 of the June 19, 1997, permit requires that if for any reason, the permitted facility or related air pollution control equipment fails or malfunctions and may cause excess emissions for more than one hour, the owner shall notify the Director, Piedmont region within four business hours of the occurrence. In addition, the owner shall provide a written statement, within 14 days, explaining the problem, corrective action taken, and the estimated duration of the breakdown/shut down. The control equipment installed was malfunctioning at the time of inspection, causing excess emissions. According to plant personnel and service personnel, the excess emissions were normal occurrences on an average day of operation. This is a potential violation of 9 VAC 5-20-180. No notification of malfunction has been received from the facility in the last 12 months.
 - e. Condition 16 of the June 19, 1997, permit requires that in order to minimize the duration and frequency of excess emissions due to malfunctions of process equipment or air pollution control equipment, the permittee shall: a) develop a maintenance schedule and maintain records of all scheduled and non-scheduled maintenance, and b) maintain an inventory of spare parts that are needed to minimize the duration of an air pollution control equipment breakdown. At the time of inspection no records of scheduled or non-scheduled maintenance had been developed or maintained. Also no spare parts relating to the control equipment were on site. This is a potential violation of 9 VAC 5-20-110.
4. On January 29, 2004, a meeting was held at the Piedmont Regional Office to discuss the Notice of Violation issued on January 9, 2004.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316(C), orders S. B. Cox Incorporated, and S. B. Cox Incorporated voluntarily agrees, to pay a civil charge of \$2,000.00 (two thousand dollars) within 30 days of the effective date of the Order in settlement of the violation cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

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

Payment shall include the Federal Tax Identification Number for the Facility

2. Within 30 days of the execution date of this Order, S. B. Cox shall submit an Operation and Maintenance Plan for the Concrete Plant located at 1920 Anderson Highway in Powhatan County, Virginia to the Piedmont Regional Office. This plan shall include but is not limited to Silo loading control measures, loadout control measures, weight batcher/mixer control measures, pressure gauges and loadout boot seal.
3. Within 30 days of the execution date of this Order, S. B. Cox shall submit for approval to the Piedmont Regional Office a Compliance Schedule to include but not limited to the following milestone dates:
 - a. Contracts for the installation of emission control equipment shall be awarded, or orders shall be issued for purchase of component parts to accomplish installation
 - b. Initiation of on-site construction for the installation of the emission control equipment.
 - c. Beginning on-site construction or installation of the emission control equipment or process equipment.
 - d. In no event shall final compliance fail to be achieved within 6 months of the effective date of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of S. B. Cox, for good cause shown by S. B. Cox, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves the violation specifically identified herein, including those matters addressed in the Notice of Violation issued to S. B. Cox Inc. by DEQ on January 9, 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, S. B. Cox admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. S. B. Cox 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. S. B. Cox 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 S. B. Cox 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. S. B. Cox 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. S. B. Cox shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. S. B. Cox 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 S. B. Cox. Notwithstanding the foregoing, S. B. Cox 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 S. B. Cox. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve S. B. Cox 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, S. B. Cox voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2004.

Robert G. Burnley, Director
Department of Environmental Quality

S. B. Cox Incorporated voluntarily agrees to the issuance of this Order.

By: _____
Morgan S. Nelson

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this ___ day of _____, 2004, by _____, who is
(name)

_____ of S. B. Cox, on behalf of the Corporation.
(title)

Notary Public

My commission expires: _____.