



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### VALLEY REGIONAL OFFICE

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David K. Paylor  
Director

R. Bradley Chewning, P.E.  
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Secretary of Natural Resources

## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION**

### **ORDER BY CONSENT ISSUED TO**

**Trex Company, Inc.  
Registration #: 81164**

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

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1187, -1184, -1307(D), -1309, and -1316(C), between the State Air Pollution Control Board and Trex Company, Inc., for the purpose of resolving certain alleged violations of environmental law 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 citizens’ board 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. “Trex” means Trex Company, Inc., a company authorized to conduct business in the Commonwealth of Virginia.

7. “Facility” means Trex’s composite wood manufacturing facility located at 3229 Shawnee Drive in Winchester, Virginia.
8. “VRO” means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
9. “CFR” means Code of Federal Regulations.

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

1. Trex representatives, during a meeting with DEQ permitting and compliance officials on June 7, 2005, inquired if DEQ approves pilot projects. DEQ officials informed Trex that it should submit a formal proposal to DEQ prior to implementation of any pilot program to determine if there are any potential permit or compliance impacts and to also determine whether a permit would be necessary.
2. DEQ would subsequently learn from Trex that the pilot project utilizing a horizontal recycler was already installed and had actually been operating at the facility since June 6, 2005, the day before this initial meeting. Trex failed to inform DEQ of this activity.
3. On June 16, 2005, DEQ received a letter dated June 13, 2005 from Trex Environmental Health and Safety Manager Denise Lee requesting permission to operate an 800-hp, diesel-powered horizontal recycler at their facility on a trial basis in order to conduct a feasibility study to determine whether pre-grinding reclaim material would improve production efficiency and improve recovery of solid waste. Trex further stated that it would like to initiate the trial “ASAP but no later than July 14, 2005” and that the trial period would last between 90 and 180 days.
4. A DEQ permitting representative contacted Trex by phone on or about June 16, 2005 and informed Trex that DEQ had some serious concerns about the proposed plan and stated that the recycler would need to be properly permitted.
5. DEQ VRO’s Air Permit Manager Sharon Foley corresponded with a letter to Trex dated July 6, 2005 to follow up on Trex’s June 13, 2005 letter and to reiterate DEQ’s concerns which were previously set out in DEQ’s telephone call to Trex on or about June 16, 2005. The letter reaffirmed DEQ’s position that “the project, as proposed, would be subject to the permitting requirements in 9 VAC Chapter 80, Article 6 of the Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution and therefore can not be approved as a pilot project.” Specifically, the proposed project was rejected because DEQ staff calculated that potential nitrogen oxide emissions from the diesel engine alone would exceed threshold limits for that pollutant after about a month of operation. Further, the letter informed Trex that the engine emissions “would increase the potential to emit of nitrogen oxides of your facility such that Trex could be classified as a Title V major source,” and that Trex must submit a Form 7 modification application if it still wished to proceed with the project.

6. After receiving an anonymous tip, a DEQ compliance inspector visited Trex's facility on December 12, 2005 and observed that a horizontal recycler had been installed and had been operating without the requisite permit. In addition, a Trex representative disclosed to the DEQ inspector that another horizontal recycler unit had also been operating at that site but was recently removed.
7. DEQ issued a Notice of Violation (NOV) to Trex on December 30, 2005 for apparent violations of State Air Pollution Control Law and regulations occurring at Trex's facility located in Winchester, Virginia. The NOV listed an apparent violation of 9 VAC 5-80-1120A, 9 VAC 5-80-1120B, and Condition 1 of Trex's minor New Source Review (NSR) permit, dated May 5, 2005.
8. Condition 1 of Trex's NSR permit states in part that: "Any changes in the permit application specifications or any existing facilities which alter the impact of the facility on air quality may require a permit. Failure to obtain such a permit prior to construction may result in enforcement action." (citing 9 VAC 5-50-390 and 9 VAC 5-80-1210D).
9. 9 VAC 5-50-390 provides:

"A permit may be required prior to beginning any of the activities specified below if the provisions of this chapter and 9 VAC 5 Chapter 80 (9 VAC 5-80) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply. ... 3. Modification (any physical change to equipment) of a facility."
10. 9 VAC 5-80-1210D provides:

"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."
11. 9 VAC 5-80-1120A provides:

"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."
12. 9 VAC 5-80-1120B provides:

"Except as provided in 9 VAC 5-80-1320A.1.c., no owner or other person shall relocate any stationary source or emissions unit from one stationary source to another without first obtaining from the board a permit to relocate the source or unit."
13. DEQ VRO officials met with Trex representatives on February 2, 2006 to discuss the matter and the activities of Trex leading to the issuance of the NOV, and agreed in principle to corrective actions and to the payment of a civil penalty. Trex completed an application for securing the proper permit for installing and operating a horizontal recycler, and thereafter

secured the proper permit. No additional corrective action was deemed necessary, whereas the facility is now operating within its permitted limits.

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

Accordingly, the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1186(2), 10.1-1309, and 10.1-1316(C), orders Trex, and Trex voluntarily agrees:

- To pay a civil charge of **\$20,040.00** within 30 days of the effective date of this Order. Payment must indicate that the civil charge is paid pursuant to this Order, and shall include Trex's Federal Identification Number. Payment shall be by check, certified check, money order, or cashier's check payable to "**Treasurer of the Commonwealth of Virginia**" and sent to:

**Receipts Control  
Department of Environmental Quality  
P. O. Box 10150  
Richmond, Virginia 23240**

- And, that Trex's consecutive 12-month rolling total operating hours for the horizontal grinder, as provided in Condition 12 of Trex's Stationary Source Permit to Modify and Operate (dated February 17, 2006), commenced with total hours of operation during June 2005 and shall include all subsequent monthly totals.

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

1. The Board may modify, rewrite, or amend the Order with the consent of Trex, for good cause shown by Trex, or on its own motion after notice to Trex and its opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein. 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 this 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, Trex admits to the allegations in Section C of this Order.
4. Trex 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. Trex declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *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 of Trex to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Trex 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. Trex 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. Trex shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Trex 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 Trex intends 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.

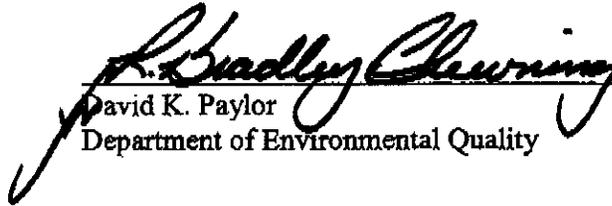
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Trex. Notwithstanding the foregoing, Trex agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. Trex petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or

- b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to Trex.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Trex from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By appropriate signature below, Trex voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 11 April, 2006.

  
David K. Paylor  
Department of Environmental Quality

Trex voluntarily agrees to the issuance of this Order.

By: William R. Gupp V.P. and General Counsel

Date: 4/11/06

Commonwealth of Virginia

City/County of Frederick

The foregoing document was signed and acknowledged before me this 4<sup>th</sup> day of  
April, 2006, by William R Gupp, who is  
(name)

V.P. and General Counsel of Trex, on behalf of Trex  
(title)

  
Notary Public

My commission expires: December 31, 2009