COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE
355-A Deadmore Street, Abingdon, Virginia 24210
Phone (276) 676-4800 Fax (276) 676-4899
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Allen J. Newman, P.E.
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Mountain Materials, Inc.
FOR
Lyall Stone Plant
VPDES General Permit Registration No. VAG840011

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Mountain Materials, Inc., regarding the Lyall Stone Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

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

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

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. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10

6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:

   (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

   (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

7. "DMR" means Discharge Monitoring Report.

8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

9. "Facility" or "Plant" means the Mountain Materials, Inc. Lyall Stone Plant, located at 4648 Potato Creek Road, Mouth of Wilson, Virginia, that treats and discharges treated effluent under the VPDES General Permit for Nonmetallic Mineral Mining.

10. "Mountain Materials" means Mountain Materials, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Mountain Materials, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.

11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

12. "O&M" means operations and maintenance.

13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

14. "Permit" means the VPDES General Permit for Nonmetallic Mineral Mining No. VAG84 which was reissued July 1, 2009 and will expire on June 30, 2014. Mountain Materials applied for registration under the Permit and was issued Registration No. VAG840011.

15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water… 9 VAC 25-31-10.

16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational,

commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

17. "Regulation" means the VPDES General Permit Regulation for Nonmetallic Mineral Mining, 9 VAC 25-190-10, *et seq.*

18. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.

19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

21. "Va. Code" means the Code of Virginia (1950), as amended.

22. "VAC" means the Virginia Administrative Code.

23. "VPDES" means Virginia Pollutant Discharge Elimination System.

24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Mountain Materials owns and operates a stone quarry (the Facility) near Mouth of Wilson, Virginia. The Permit authorizes discharges of commingled industrial wastewater and stormwater associated with industrial activity from outfall 001, as well as stormwater associated with industrial activity from outfall 002 to an unnamed tributary to Piney Creek in strict compliance with the terms and conditions of the Permit.

2. Both the unnamed tributary to Piney Creek and Piney Creek are located in the New River Basin, Section 2, Class IV, special standards: None. The New River is located in the New River Basin, Section 2K, special standard "v" (maximum temperature 29 degrees C). No water quality assessment has been done on Piney Creek from the North Carolina line to Mouth of Wilson, Virginia.

3. On October 10, 2013, DEQ received a report of a discharge of sediment from the Facility from an anonymous caller. On October 15, 2013, DEQ SWRO staff conducted a reconnaissance inspection at the Facility.

4. Basin No. 3 receives wastewater generated from the washing of sand. The wastewater is pumped from the washing unit directly to basin No. 3 to allow for the settling of solids to begin. This pump, located beside basin No.1, was not in operating condition. Due to the pump malfunctioning, wastewater was being directed to basin No. 1, causing an overload of solids that were overflowing to basin No. 4 and creating a visible discharge of solids from outfall 001 into an unnamed tributary to Piney Creek. The receiving stream was turbid and gray at the time of the inspection. A notable build-up of solids had collected on rocks at or above the current water level, as well as in calm pools of the stream. Upon confluencing with Piney Creek, a distinct plume was noted until mixing was achieved and the whole of Piney Creek became grey in color. A slight plume of solids was evident at the confluence of Piney Creek with the New River.

5. During the inspection, the Facility Superintendent was told that the loss of solids through the effluent, such as that noted in Item 4 above, is considered an unusual or extraordinary discharge. The Superintendent was told that any such unusual or extraordinary discharge must be reported to DEQ by phone within 24 hours of noticing the discharge and followed up with a five day letter explaining the discharge. DEQ has no record of the loss of solids, which had occurred periodically at the Facility for approximately 30 days prior to October 15, 2013, being reported to DEQ either verbally or in writing.

6. Part III, Section H of the Permit states that if any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III, Section I.2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from: (1) Unusual spillage of materials resulting directly or indirectly from processing operations; (2) Breakdown of processing or accessory equipment; (3) Failure or taking out of service some or all or the treatment works; and (4) Flooding or other acts of nature.

7. During the inspection, the Facility Superintendent stated that he had been notified by personnel from the neighboring concrete plant of the stream's condition about a month previously. He indicated that he had investigated and determined there was a pump not working properly. Per a follow-up inspection conducted on October 22, 2013, DEQ staff observed that a new pump had been installed. Employees present indicated that the pump had been installed the previous day, October 21, 2013. Adjustments to the pump were still being made at the time of inspection.

8. Part III, Section Q of the Permit states that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

9. During the October 15, 2013 inspection, a current storm water pollution prevention plan (SWPPP) was not available. Mountain Materials has a spill prevention control and countermeasure (SPCC) plan. However, the SPCC plan does not contain all the elements required in a SWPPP. These included results of quarterly visual monitoring, a record of storm events, a maintenance log and record of visual inspections of the facility's sedimentation basins, and reports regarding unauthorized discharges. A complete SWPPP was received by DEQ staff December 2, 2013.

10. Part II, Sections D and F of the Permit state that the permittee shall develop, retain at the Facility, and provide to DEQ upon request a SWPPP.

11. The third quarter 2013 DMR, received by DEQ on October 9, 2013, includes a total suspended solids (TSS) average concentration value of 42.2 mg/l. During the October 22, 2013 follow-up inspection, DEQ staff collected an effluent grab sample for laboratory analysis by the Division of Consolidated Lab Services (DCLS) for TSS. The analysis result was 258 mg/l.

12. Part I, Section A.1 of the Permit states that discharges from outfall 001 shall be limited to 30 mg/l total suspended solids monthly average concentration and 60 mg/l total suspended solids maximum concentration.

13. Va. Code § 62.1-44.5 prohibits waste discharges or other quality alterations of state waters except as authorized by permit. Regulation 9 VAC 25-190-70 (General Permit), Part III, Section F states that "(e)xcept in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses. Regulation 9 VAC 25-190-70, Part I, Section B.7 states that "(e)xcept as expressly authorized by this permit, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters".

14. SWRO issued NOV No. W2013-12-S-0001 to Mountain Materials on December 9, 2013.

15. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

16. The Department has issued no permits or certificates to Mountain Materials for the Facility other than by coverage under the VPDES General Permit for Nonmetallic Mineral Mining, Registration Statement No. VAG840011.

17. The unnamed tributary to Piney Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

18. On January 7, 2014, Department staff met with representatives of Mountain Materials to discuss the violations. At the meeting, Mountain Materials' representatives submitted documentation, including "Notice of Violation Notes", a template "Monthly Pond Fines Inspection" logsheet, a written response to the NOV, a "Pump Repair Timeline" and a "Costs and Lost Profit" statement. On January 15, 2014, the Facility Superintendent submitted a new "Lyall Stone Water Flow Chart" indicating the complete treatment scheme prior to discharge of effluent from outfall 001.

19. Based on the results of the October 15, 2013 and October 22, 2013 inspections, the January 7, 2014 meeting, and documentation submitted December 2, 2013, January 7, 2014 and January 15, 2014, the Board concludes that Mountain Materials has violated the Permit and Regulation 9 VAC 25-190-10, *et seq.* by discharging industrial waste and stormwater associated with industrial activity from the Facility while concurrently failing to comply with the conditions of the Permit, as described in Section C, paragraphs 4, 5, 7, 9 and 11 above.

20. Mountain Materials has submitted documentation that verifies that the violations as described in Section C, paragraphs 4, 5, 7, 9 and 11 above, have been addressed and corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Mountain Materials, Inc., and Mountain Materials, Inc. agrees to pay a civil charge of $4,200.00 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

Mountain Materials, Inc. 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Mountain Materials, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Mountain Materials for good cause shown by Mountain Materials, 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 and in NOV No. W2013-12-S-0001, issued December 9, 2013. 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, Mountain Materials admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Mountain Materials 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. Mountain Materials declares it has received fair and due process under the Administrative Process Act and the State Water 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 Mountain Materials 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. Mountain Materials 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. Mountain Materials shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mountain Materials 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 Mountain Materials.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after Mountain Materials has completed all of the requirements of the Order;

    b. Mountain Materials 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 Mountain Materials.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mountain Materials 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 Mountain Materials 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 Mountain Materials 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 Mountain Materials to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Mountain Materials.

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, Mountain Materials voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2014.

_____
Allen J. Newman, P.E., Regional Director
Department of Environmental Quality

Mountain Materials, Inc. voluntarily agrees to the issuance of this Order.

Date: MAY 05, 2014 By: _____, VP/GM
(Person) (Title)
Mountain Materials, Inc.

Commonwealth of Virginia

City/County of Washington

The foregoing document was signed and acknowledged before me this 5th day of May, 2014, by John Carl Wilkinson who is Vice President/General Mgr of Mountain Materials, Inc., on behalf of the corporation.

Alysha Gentry Greenwell
Notary Public

7514871
Registration No.

My commission expires: 11-30-16

Notary seal:

ALYSHA GENTRY GREENWELL
COMMONWEALTH OF VIRGINIA
EXPIRES 11-30-16
#7514871
NOTARY PUBLIC