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DEQ-SWRO

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD AND VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION – SPECIAL ORDER BY CONSENT
ISSUED TO
STRATA MINE SERVICES, INC.
FOR
A FACILITY LOCATED AT 4891 SWORDS CREEK ROAD
SWORDS CREEK, VIRGINIA
EPA ID No. VAR000516872

SECTION A: Purpose

This is a Consent Special Order issued by the State Water Control Board and the Virginia Waste Management Board to Strata Mine Services, Inc. This Order is issued by the Water and Waste Boards ("Boards"), through the Director of the Department of Environmental Quality, pursuant to the authority granted to the Water Board and the Director under Va. Code §§ 62.1-44.15(8a) and (8d) and 10.1-1184, and the authority granted to the Waste Board and the Director under Virginia Code §§ 10.1-1405(C) and (F) to resolve certain violations of the State Water Control Law and regulations, the Virginia Waste Management Act and the Virginia Hazardous Waste Management Regulations.

SECTION B: Definitions

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

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

2. "VAC" means Virginia Administrative Code.

3. "Water Board" or "SWCB" means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.

4. "Waste Board" means the Virginia Waste Management Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 10.1-1401.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code §10.1-1183.

6. "Director" means the Director of the Department of Environmental Quality.

7. "SWRO" means the Department's Southwest Regional Office, located in Abingdon, VA.

8. "Order" means this document, also known as a Consent Special Order.

9. "Strata" or "Company" means Strata Mine Services, Inc., a corporation authorized to do business in Virginia, and its affiliates, partners, subsidiaries and parents. The Company is a "person" within the meaning of the State Water Control Law, Virginia Code § 62.1-44.3, and the Virginia Waste Management Act, Virginia Code § 10.1-1400, and is therefore liable as a person under the law.

10. "Facility" means the Strata Mine Services, Inc. facility located at 4891 Swords Creek Road, Swords Creek, Virginia 24649.

11. "Generator" means a hazardous waste generator, as defined by 40 CFR § 260.10.

12. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions (See 40 CFR § 262.34(d)-(f)).

13. "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR (e.g., 40 CFR § 262.34 means that section as incorporated by 9 VAC 20-60-262). Citations to independent Virginia requirements are made directly to the VHWMR (e.g., 9 VAC 20-60-315(D)).

SECTION C: Findings of Facts and Conclusions of Law

1. Strata operates the Facility, supplying specialized products and turnkey installation of ventilation seals, overcasts, gunite and cavity fillers to the mining industry. The Company also provides concrete pumping and general construction services.

2. In response to a report of a fish kill received on September 25, 2008 (IR No. 2009-S-0114), DEQ SWRO staff conducted a field investigation at Swords Creek in Russell County the following day, September 26, 2008. Results of that investigation revealed the following: a) dead fish were observed for approximately 0.5 mile in Swords Creek downstream from Strata's Facility; b) visible foam was noted on the surface of Swords Creek, up to a distance of 1.2 miles downstream from Strata's Facility; c) visible foam

was present both in a storm drain drop inlet and the storm drain discharge point on the bank of Swords Creek, at the Facility; and d) no dead fish or visible foam was seen in/on the surface of Swords Creek upstream from the Facility. Staff counted 2,988 dead fish in Swords Creek. The replacement cost of the fish is $394.97, and staff investigation costs totaled $443.43.

3. Per an on-site interview with an employee, Strata used Ferdel B.S., an alkaline cleaner, in its operations at the Facility. Per the MSDS sheet for Ferdel B.S., it must not reach bodies of water or a drainage ditch undiluted or unneutralized. A high pH value harms aquatic organisms. It appears that aqueous Ferdel B.S. was disposed of by release into a floor drain inside the building. The floor drain apparently discharges into an outside storm drain, which then discharges into Swords Creek. Strata personnel have stated that Ferdel B.S. is no longer used at the Facility. Per written correspondence, Strata personnel have documented that the floor drains are now sealed. Strata holds no permits from the State Water Control Board to authorize any discharge from the Facility.

4. The Water Quality Standards at 9 VAC 25-260-20 require that all state waters shall be free from substances attributable to sewage, industrial waste, and other material in concentrations which interfere with designated uses of such water or which are harmful to human, animal, plant or aquatic life. Virginia Code § 62.1-44.5(A)(1) and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation at 9 VAC 25-31-50(A) state that except in compliance with a certificate or permit issued by the State Water Control Board, it shall be unlawful for any person to discharge into state waters sewage, industrial waste, other wastes, or any noxious or deleterious substances or to otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life. Virginia Code § 62.1-44.5(B) and the VPDES Permit Regulation at 9 VAC 25-31-50(B) set forth reporting requirements to the Board of any such discharges. Virginia Code § 62.1-44.15(11)(a) states that the State Water Control Board may effect a settlement that will cover the cost of investigating the killing of fish and the cost of the fish destroyed. Strata is a "person" within the meaning of the State Water Control Law, Virginia Code § 62.1-44.3, and is therefore liable as a person under the law.

5. On November 6, 2008, DEQ SWRO staff conducted a Focused Compliance Inspection ("FCI"), a type of hazardous waste inspection, of the Facility. On November 12, 2008, DEQ returned to the Facility for additional information.

6. The Facility generates used oil. Some used oil containers were bulging. All used oil containers present at the time of inspection have since been transported for disposal.

7. 40 CFR 279.22(b)(1) states that containers and above ground tanks used to store used oil at generator facilities must be in good condition (no severe rusting, apparent structural defects or deterioration).

8. Some used oil containers were observed to be leaking. During the follow-up site visit November 12, 2008, it was observed that oil released from these containers had been cleaned up.

9. 40 CFR 279.22(b)(2) states that containers and above ground tanks used to store used oil at generator facilities must be not leaking (no visible leaks). 40 CFR 279.22(d) states that "upon a detection of a release of used oil to the environment..., a generator must perform the following cleanup steps:

   (1) Stop the release;
   (2) Contain the released used oil;
   (3) Clean up and manage properly the released used oil and other materials; and
   (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service".

10. Used oil containers holding used oil were observed that were not labeled with the words "used oil". All used oil containers present at the time of inspection have since been transported for disposal.

11. 40 CFR 279.22(c) states that containers and above ground tanks holding used oil must be labeled or marked clearly with the words "Used Oil".

12. DEQ staff issued a "Request for Information" letter to Strata on December 15, 2008. Per inventory figures received from Strata's consultant, the quantity of hazardous waste on site at the Facility (545.45 KG of hazardous waste reported, largely Rocsil catalyst and resin, mine safety products) categorize Strata as a SQG. However, Strata did not have an EPA Identification Number at the time of the inspection. Strata applied for, and an EPA Identification Number (VAR000516872), was issued on November 24, 2008. Strata hired an environmental consulting firm to oversee proper categorization, and shipping for disposal of all hazardous waste on site at the Facility had been completed prior to DEQ staff meeting with Strata personnel on-site on January 21, 2009. Per manifests submitted, shipping occurred on January 12, 2009 and January 20, 2009.

13. 40 CFR 262.12(a) states that a generator must not treat, store, dispose of, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.

14. 40 CFR 262.34(d) states that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

    (1) The quantity of waste accumulated on-site never exceeds 6000 kilograms;
    (2) The generator complies with the requirements of subpart I of part 265 of this chapter, except for Sec. Sec. 265.176 and 265.178;
    (3) The generator complies with the requirements of Sec. 265.201 in subpart J of part 265;
    (4) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section, the requirements of subpart C of part 265, the requirements of 40 CFR 268.7(a)(5); and ... .

15. No "accumulation start date" was observed on hazardous waste containers, as is required of a SQG.

16. 40 CFR 262.34(a)(2) requires that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.

17. Containers of hazardous waste were not labeled or marked clearly with the words "Hazardous Waste" while being accumulated, as is required of a SQG.

18. 40 CFR 262.34(a)(3) requires that while being accumulated on site, each container and tank is labeled or marked clearly with the words "Hazardous Waste".

19. Containerized materials were observed and documented as being stored outside, on uncovered concrete storage pads at the Facility. Evidence of leakage and/or spills was apparent. However, during the follow-up site visit November 12, 2008, it was observed that spills had been cleaned up and containerized. Materials that have been spilled or leaked may be considered discarded. Pursuant to Va. Code § 10.1-1400 and 9 VAC 20-80-10, discarded materials are considered solid waste. Thus, the materials that leaked and spilled out the containers are considered solid waste. This solid waste was stored on-site.

20. Virginia Code § 10.1-1408.1(A) states "[n]o person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director." 9 VAC 20-80-90(A)(1) states, "[n]o person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of solid waste without a permit from the Director."

21. NOV No. NOV-004-0209-HW was issued to Strata on February 3, 2009 for violating the statutory and regulatory provisions cited in paragraphs C 4, 7, 9 11, 13,14, 16, 18 and 20 above.

SECTION D: Agreement and Order

Accordingly the State Water Control Board and the Virginia Waste Management Board, by virtue of the authority granted them pursuant to Va. Code § 62.1-44.15 (8a), (8d) and (11), and Va. Code § 10.1-1455(C) and (F) respectively, order Strata, and Strata voluntarily agrees to pay the following costs and civil charge, as described below, within **30 days** of the effective date of the Order in settlement of the violations cited in this Order:

A. Pay $394.97 to cover the replacement cost of fish killed, remitting a check payable to the Department of Game and Inland Fisheries; and

B. Pay $443.43 to cover the investigation costs of the fish kill, and pay a $24,000.00 civil charge, remitting one check payable to the Treasurer of Virginia for the total amount of $24,443.43.

Payments shall be made by check, certified check, money order or cashier's check. Both checks should be delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Either on a transmittal letter or as a notation on each check or money order, Strata shall indicate that each payment is submitted pursuant to this Order and shall include Strata's Federal Identification Number.

SECTION E: Administrative Provisions

1. The Boards may modify, rewrite, or amend the Order with the consent of Strata, for good cause shown by Strata, or on their own motion pursuant to the Administrative Process Act 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 Boards 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. 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, Strata admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Strata 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. Strata declares it has received fair and due process under the Administrative Process Act, Code § 2.2-4000 *et seq.*, the State Water Control Law and the Virginia Waste Management Act, 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 Boards to modify, rewrite, amend or enforce this Order.

6. Failure by Strata to comply with any of the terms of this Order shall constitute a violation of an Order of the Boards. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Boards 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. Strata 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. Strata shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Strata 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 this Order. Such notice shall set forth:

    a. the reasons for the delay or noncompliance;
    b. the projected duration of 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 Strata intends to assert will result in the impossibility of compliance, shall constitute 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 Strata. Nevertheless, Strata 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) Strata 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

    (b) the Director or Boards terminate the Order in his or their sole discretion upon 30 days written notice to Strata.

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

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, Strata voluntarily agrees to the issuance of this Order.

And it is ORDERED this ___ day of _____, 2009

_____
Dallas R. Sizemore, Regional Director
Department of Environmental Quality

Strata Mine Services, Inc. voluntarily agrees to the issuance of this Order.

Name: _____

Title: VP and General Manager

Date: 7/22/09

Commonwealth of ~~Virginia~~ West Virginia

City/County of Monongalia

The foregoing document was signed and acknowledged before me this 22nd day of July, 2009 by Jeffrey Hamrick (name), who is VP and General Manager (title) of Strata Mine Services, Inc., on behalf of Strata Mine Services, Inc.

Nancy Everly
Notary Public

My commission expires: May 24, 2012

OFFICIAL SEAL
Notary Public, State of West Virginia
NANCY EVERLY
908 ANN MARIE DRIVE
MORGANTOWN, WV 26508
My Commission Expires MAY 24, 2012