



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Hill Sand & Gravel, Inc. Registration No. 61747

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 Hill Sand & Gravel, Inc., 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. "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.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Facility" means the Hill Sand & Gravel, Inc. a supplier of mined sand and related material located at 24680 Front Street, Accomac, VA 23301.
5. "Hill Sand & Gravel" means Hill Sand & Gravel, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Hill Sand & Gravel is a "person" within the meaning of Va. Code § 10.1-1300.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "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.
8. "Permit" means an air permit to construct and operate an air emissions source.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
10. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "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. Hill Sand & Gravel owns and operates the Facility in Accomac, Accomack County, Virginia. The Facility is a supplier of materials such as mined sand.
2. On February 28, 2018, DEQ staff observed a crusher and screener located at the facility. Hill Sand & Gravel staff noted that there were no air permits for the crusher or screener.
3. A subsequent review of DEQ records confirmed that DEQ had not issued an air permit for Hill Sand & Gravel to construct and operate the crusher and screener at the Facility.
4. A review of DEQ files did not find notification of construction, anticipated date of initial startup, or actual date of startup of the crusher or screener.
5. 9 VAC 5-80-1120(A) provides that no owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining a permit.
6. 9 VAC 5-80-1210(E) states that any owner who constructs or operates a stationary source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a source who commences construction or operation without receiving a permit, shall be subject to appropriate enforcement action.
7. 9 VAC 5-50-50(A)(1) requires that any owner or operator of a new or modified source shall provide written notifications of the date of commencement of construction, reconstruction, or modification of a new or modified source no later than 30 days after such date.

8. On April 28, 2018, Hill Sand & Gravel submitted an "Application Statement" for a Virginia Nonmetallic Mineral Processing General Permit ("General Permit").
9. On October 26, 2018, based upon information available to DEQ that the crusher and screener were applicable to air permitting, DEQ issued to Hill Sand & Gravel NOV number ATRO001035 for construction and operation of the crusher and screener without an air permit and failure to notify DEQ of the installation and startup of the equipment.
10. On November 6, 2018, DEQ met with Hill Sand & Gravel staff to discuss the permitting process, the information needed to complete the permit application, and the enforcement process. During that meeting, Hill Sand & Gravel staff informed DEQ that the crusher had been on-site for approximately eight years.
11. On January 17, 2019, DEQ notified Hill Sand & Gravel by email that due to the processing of concrete and asphalt, the crusher and screener were not applicable to the General Permit, and that the facility was subject to New Source Review permitting.
12. On February 6, 2019, DEQ requested that Hill Sand & Gravel submit an application for a New Source Review air permit. Hill Sand & Gravel did not respond to this request.
13. On May 12, 2020, by telephone, Hill Sand & Gravel provided that it had been unclear of the change in permitting requirements between the General Permit and New Source Review permit and did not know why the application for the General Permit would not suffice for the New Source Review permit. Hill Sand & Gravel noted that they would make every effort to submit the new air permit application information requested by DEQ.
14. Based on the results of the air permit application evaluation and the Regulations, the Board concludes that Hill Sand & Gravel has violated C(3) through C(7), 9 VAC 5-80-1120(A), 9 VAC 5-80-1210(E), and 9 VAC 5-50-50(A)(1), as described in paragraphs C(3) through C(7), above.
15. In order for Hill Sand & Gravel to return to compliance, DEQ staff and representatives of Hill Sand & Gravel 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 Hill Sand & Gravel, and Hill Sand & Gravel agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$8,000.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

<u>Payment Due Date</u>	<u>Payment Amount</u>
October 15, 2020	\$2,000
November 15, 2020	\$1,000
December 15, 2020	\$1,000
January 15, 2021	\$1,000
February 15, 2021	\$1,000
March 15, 2021	\$1,000
April 15, 2021	\$1,000

3. If the Department fails to receive a civil charge payment pursuant to the schedule described in the above paragraphs D.1., the payment shall be deemed late. If any payment is late, the Department shall have the right to demand in writing full payment of the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under 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

Hill Sand & Gravel 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, Hill Sand & Gravel 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 Hill Sand & Gravel for good cause shown by Hill Sand & Gravel, 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. ATRO001035 dated October 26, 2018. 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, Hill Sand & Gravel admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Hill Sand & Gravel 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. Hill Sand & Gravel 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 Hill Sand & Gravel 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. Hill Sand & Gravel 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. Hill Sand & Gravel shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hill Sand & Gravel 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.

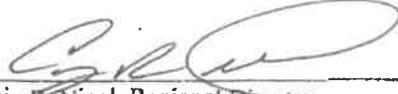
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Hill Sand & Gravel. Nevertheless, Hill Sand & Gravel agrees to be bound by any compliance 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 Hill Sand & Gravel has completed all of the requirements of the Order;
 - b. Hill Sand & Gravel 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 Hill Sand & Gravel.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hill Sand & Gravel 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 Hill Sand & Gravel 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 Hill Sand & Gravel certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Hill Sand & Gravel to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Hill Sand & Gravel.
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, Hill Sand & Gravel voluntarily agrees to the issuance of this Order.

Consent Order
Hill Sand & Gravel, Inc.
Registration No. 61747
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And it is so ORDERED this 3rd day of August, 2020.



Craig R. Nicol, Regional Director
Department of Environmental Quality

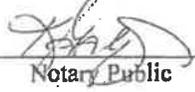
Hill Sand & Gravel voluntarily agrees to the issuance of this Order.

Date: 7/31/20 By: Mark Hill PRESIDENT
(Person) (Title)
Hill Sand & Gravel, Inc.

Commonwealth of Virginia
City/County of Accomack

The foregoing document was signed and acknowledged before me this 31st day of

July, 2020, by Frank S. Hill who is
President of Hill Sand & Gravel, Inc., on behalf of the corporation.



Notary Public
7763182

Registration No.

My commission expires: Oct 31 2022

Notary seal:



**APPENDIX A
SCHEDULE OF COMPLIANCE**

Hill Sand & Gravel shall:

1. By October 1, 2020, submit an application for a minor New Source Review air permit regarding the crusher and screener;
2. Within 30 days of receipt, respond to each request for information from DEQ regarding completion of the application and minor New Source Review air permit for the crusher and screener.