



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800 Fax (703) 583-3821

www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BLUE RIDGE CRUSHING & SCREENING, LLC
Registration Nos. 41069 & 41077**

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 Blue Ridge Crushing & Screening, LLC, regarding portable facilities, Registration Nos. 41069 & 41077 for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, the applicable permit and regulations.

SECTION B: Definitions

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

1. "Blue Ridge" or "Blue Ridge Crushing & Screening" means Blue Ridge Crushing & Screening, LLC (formally known as B&S Site Development), a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. Blue Ridge Crushing & Screening, LLC is a "person" within the meaning of Va. Code § 10.1-1300.
2. "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.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
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. "2008 Permit" means the New Source Review permit to construct and operate a portable crusher, registration number 41069, which was issued under the Virginia Air Pollution Control Law and the Regulations to B&S Site Development on March 21, 2008.
9. "2009 Permits" means the New Source Review permits to construct and operate a portable crusher, registration number 41069 & 41077, which was issued under the Virginia Air Pollution Control Law and the Regulations to Blue Ridge Crushing & Screening, LLC on July 10, 2009.
10. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
15. "VEE" means a Visible Emissions Evaluation, as determined by EPA Reference Method 9 (*see* 40 CFR 60, Appendix A).

SECTION C: Findings of Fact and Conclusions of Law

1. Blue Ridge owns and operates two portable rock crushing units in Warrenton, Virginia. The units are permitted by the Department under registration numbers 41069 and 41077.

Reference: Portable Crusher (Reg. No: 41069)

2. On February 27, 2009, Department staff conducted a Partial Compliance Evaluation of the Facility for compliance with the requirements of the Virginia Air Pollution Control

Law, the Permit, and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

- a. Failure to submit notification to DEQ of the crusher's actual start-up date and the anticipated date of performance tests, in accordance with Condition 15 of the 2008 Permit (40 CFR Part 60, §60.7(a)).
 - b. Failure to submit notification to DEQ of relocation of the crusher since the plant start-up, in accordance with Condition 10 of the 2008 Permit.
 - c. Failure to conduct a VEE, in accordance with Condition 12 of the 2008 Permit (40 CFR Part 60, §§ 60.8, 60.11 & 60.675).
 - d. Failure to maintain a copy of the permit on-site with the plant, in accordance with Condition 26 of the 2008 Permit.
3. Condition 15 of the 2008 Permit requires that “ The permittee shall furnish written notification to the Regional Air Compliance Manager of the DEQ’s NRO at the address referenced in Condition 14: (a) The actual date on which the installation of the portable crusher commenced within thirty days after such date. (b) The actual start-up date of the portable crusher within fifteen days such date. (c) The anticipated date of performance tests postmarked at least thirty days prior to such date. Copies of the written notification referenced in items a, b, and c above are to be sent to: Associate Director... (9 VAC 5-50-50 and 9 VAC 5-80-1180)”
 4. Condition 10 of the 2008 Permit requires that “At least fifteen days prior to each relocation, the following information shall be submitted to the reviewing DEQ-Regional Office (the Region to which the facility shall be relocated): (a) The facility registration number. (b) The date of the permit. (c) Date of estimated relocation and start-up of the facility. (d) The period of time the facility will be at the proposed site. (e) The location and description of the proposed site, including a map showing the exact location. (f) The location of the home office and the current address or location of the portable plant. If the present site in outside the Commonwealth of Virginia, include the latest location in Virginia. (g) A description of the facility to be relocated. This should include any identification or equipment number that the owner uses to identify the facility. (h) A description of the action at the proposed site. This includes the type of product and the total throughput at the propose site. (i) The process throughput which has occurred at the present site, if this site is located inside the Commonwealth of Virginia. (j) The process throughput for the previous twelve consecutive months. (9 VAC 5-80-1320 and 9 VAC 5-170-160)”
 5. Condition 12 of the 2008 Permit requires that “Visible Emission Evaluations (VEE) in accordance with 40 CFR Part 60, Appendix A, Method 9, shall be conducted by the permittee on the portable crusher (Ref. No. 1) to demonstrate compliance with the requirements of Condition 7... (9 VAC 5-50-30, 9 VAC 5-80-1200, 9 VAC 5-50-410)”.
 6. Condition 26 of the 2008 Permit and requires that “The permittee shall keep a copy of this permit on the premises of the facility to which it applies. (9 VAC 5-80-1180)”

7. On April 14, 2009, based on the inspection and follow-up information, the Department issued a Notice of Violation to Blue Ridge for the violations described in paragraphs C(2) through C(6), above.

Reference: Portable Crusher (Reg. No: 41077)

8. On February 23, 2009, Department staff conducted a Partial Compliance Evaluation of the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:
 - a. Failure to utilize wet suppression to control dust during the operation of a portable crusher, in accordance with 9 VAC 5-40-90.
 - b. Failure to obtain a permit prior to operation, in accordance with 9 VAC 5-80-1210 D.
 - c. Failure to provide notice of construction, anticipated start-up, or actual start-up to DEQ, in accordance with 9 VAC 5-50-50 (A).
9. 9 VAC 5-40-90 requires that “No owner or other person shall cause or permit any materials or property to be handled, transported, stored, used, constructed, altered, repaired or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne...”
10. 9 VAC 5-80-1210(D) requires that “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 5-50-50 (A) requires that “Any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board of the following: (1.) The date of commencement of construction, reconstruction or modification of a new or modified source postmarked no later than 30 days after such date. (2) The anticipated date of initial startup of a new or modified source postmarked not more than 60 days nor less than 30 days prior to such date. (3) The actual date of initial startup of a new or modified source postmarked within 15 days after such date. (4) The date upon which demonstration of the continuous monitoring system performance begins in accordance with 9 VAC 5-50-40 C. Notification shall be postmarked not less than 30 days prior to such date. (5) The date upon which demonstration of the continuous monitoring system performance begins in accordance with 9 VAC 5-50-40 C. Notification shall be postmarked not less than 30 days prior to such date. (6) The anticipated date for conducting the opacity observations required by 9 VAC 5-50-20 G 1. The notification shall also include, if appropriate, a request for the board to provide a visible emissions

reader during a performance test. The notification shall be postmarked not less than 30 days prior to such date.”

12. On April 15, 2009, based on the inspection and follow-up information, the Department issued Notice of Violation to Blue Ridge for the violations described in paragraphs C(8) through C(11), above.
13. On April 15, 2009, Department staff met with representatives of Blue Ridge to discuss the violations.
14. On May 7, 2009, Blue Ridge submitted VEE protocols for both portable crushers that were reviewed and approved by DEQ staff.
15. On May 8, 2009, and May 9, 2009, Blue Ridge conducted initial VEE's on the portable crushers, registration numbers 41069 and 41077 respectively.
16. On May 28, 2009, Blue Ridge submitted to DEQ a letter detailing the start-up dates for the portable crushers owned by the company.
17. On June 12, 2009, the submitted VEE test reports were approved by DEQ.
18. On July 10, 2009, DEQ issued the two 2009 Permits for the portable crusher units owned and operated by Blue Ridge that are the subject of this enforcement action. The 2008 Permit for registration number 41069 was amended in order to accurately represent the serial numbers of the units operated by Blue Ridge and covered by the permit.
19. Based on the results of February 23, 2009 and February 27, 2009 inspections, the Board concludes that Blue Ridge Crushing & Screening, LLC has violated conditions 10, 12, 15, 26 of the 2008 Permit,, 9 VAC 5-40-90, 9 VAC 5-50-50(A) and 9 VAC 5-80-1210(D), as described in paragraphs C(2) through C(11), above.
20. Blue Ridge Crushing & Screening, LLC has submitted documentation that verifies that the violations described in paragraphs C(2) and C(11), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Blue Ridge Crushing & Screening, LLC, and Blue Ridge Crushing & Screening, LLC agrees to pay a civil charge of \$11,607.00 in settlement of the violations cited in this Order. The payments will be made on the following dates:

- a. \$2,000.00 will be paid within 30 days of the effective date of this Order.
- b. \$2,000.00 will be paid within 60 days of the effective date of this Order.
- c. \$2,000.00 will be paid within 90 days of the effective date of this Order.
- d. \$2,000.00 will be paid within 120 days of the effective date of this Order.

- e. \$2,000.00 will be paid within 150 days of the effective date of this Order.
- f. \$1,607.00 will be paid within 180 days of the effective date of 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

Blue Ridge Crushing & Screening, LLC 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Blue Ridge Crushing & Screening, LLC for good cause shown by Blue Ridge Crushing & Screening, LLC, 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. 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, Blue Ridge Crushing & Screening, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Blue Ridge Crushing & Screening, LLC 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. Blue Ridge Crushing & Screening, LLC 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 Blue Ridge Crushing & Screening, LLC 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. Blue Ridge Crushing & Screening, LLC 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. Blue Ridge Crushing & Screening, LLC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Blue Ridge Crushing & Screening, LLC 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 Blue Ridge Crushing & Screening, LLC 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 Blue Ridge Crushing & Screening, LLC. Nevertheless, Blue Ridge Crushing & Screening, LLC 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. Blue Ridge Crushing & Screening, LLC 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 Board terminates the Order in his or its sole discretion upon 30 days' written notice to Blue Ridge Crushing & Screening, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Blue Ridge Crushing & Screening, LLC 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 Blue Ridge Crushing & Screening, LLC 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 Blue Ridge Crushing & Screening, LLC 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 Blue Ridge Crushing & Screening, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Blue Ridge Crushing & Screening, LLC.
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, Blue Ridge Crushing & Screening, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 10th day of June, 2010.


Thomas A. Faha, Regional Director
Department of Environmental Quality

Blue Ridge Crushing & Screening, LLC voluntarily agrees to the issuance of this Order.

Date: 6/7/10 By: Gregory Settle, Vice President
(Person) (Title)
Blue Ridge Crushing & Screening, LLC

Commonwealth of Virginia
City/County of Loudoun

The foregoing document was signed and acknowledged before me this 7 day of
June, 2010, by Gregory Settle who is
owner of Blue Ridge Crushing & Screening, LLC, on behalf of the
company.

[Signature]
Notary Public
7256659
Registration No.

My commission expires: 8-31-13

Notary seal:

