



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO C.E.D. ENTERPRISES, INC. Registration No. 80699

#### **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 C.E.D. Enterprises, Inc., regarding the Facility located at 221 Sand Mine Road in Gore, Virginia, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and 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. "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. "CED" means C.E.D. Enterprises, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. CED is a "person" within the meaning of Va. Code § 10.1-1300.
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. "Facility" means the CED facility, located at 221 Sand Mine Road in Frederick County, Virginia.
6. "FCE" means a full compliance evaluation by DEQ staff.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "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.
9. "PCE" means a partial compliance evaluation by DEQ staff.
10. "Permit" means a minor New Source Review (NSR) permit to operate and construct a silica sand processing facility which was issued under the Virginia Air Pollution Control Law and the Regulations to CED on August 4, 2016. A modified Permit was issued to CED on July 6, 2018.
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 Method 9 (*see* 40 CFR 60, Appendix A).

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

1. CED is subject to a Minor New Source Review (NSR) Permit (Stationary Source Permit to Modify and Operate) to construct and operate a silica sand processing facility in Gore, Virginia, issued on August 4, 2016. CED has since been issued a modified Permit, on July 6, 2018.
2. On September 21 and September 22, 2017, DEQ staff performed a PCE of the Facility and observed the stack testing.

3. On November 20, 2017, CED submitted the stack test results to DEQ. The report indicated that Kiln 1 (K1) and Kiln 2 (K2) exceeded the emissions limits in Permit Condition 12. Reported emissions on September 21, 2017 were as follows: K1 / PM-10 = 2.54 lb/hr and NOx = 3.7 lb/hr; K2 / PM = 59.04 lb/hr, PM-10 = 59.12 lb/hr, and NOx = 21.9 lb/hr. On September 22, 2017, the reported emissions values were as follows: K1/ NOx = 4.4 lb/hr and K2/NOx = 20.3 lb/hr.
4. Permit Condition 12 states: "Emissions from the operation of each rotary kiln (K1, K2 and K3) shall not exceed the limits specified below: Particulate Matter (PM) 2.5 lb/hr and 11.0 tons/yr; PM-10 2.4 lb/hr and 10.5 tons/yr; Sulfur Dioxide 0.2 lb/hr and 1.0 tons/yr; Nitrogen Oxides (as NO2) 2.9 lb/hr and 12.6 tons/yr; Carbon Monoxide 0.5 lb/hr and 2.1 tons/yr. Annual emissions shall be calculated monthly as the sum of each consecutive 12-month period."
5. 9 VAC 5-50-260.A states that: "No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of emissions limitations representing best available control technology, as reflected in any term or condition that may be placed upon the minor NSR permit approval for the facility."
6. On December 19, 2017, based on the evaluation and follow-up information, the Department issued NOV No. AVRO000765-001 to CED for the violations described in paragraphs C(3) through C(4), above.
7. On January 9, 2018, DEQ met with CED to discuss the NOV and potential Permit modifications. During the meeting, CED informed DEQ that it hired a consultant to evaluate the Facility air equipment in preparation for future upgrades. During this process of evaluation, including stack testing, CED discovered that the original emission factors for the equipment included in the Permit were incorrect. In addition, it was determined maintenance and equipment modification would be required to meet appropriate Permit emissions requirements. CED agreed to submit an updated Form 7 Application in order to accommodate future expansion plans, and changes in equipment operations. On November 21, 2017, DEQ received the original Form 7 Application, and on June 5, 2018 deemed the application complete.
8. On July 6, 2018, DEQ issued to CED a modified Permit to increase production capacity and update emission factors based on the September 2017 stack testing. This modification also included equipment upgrades and additional pollution control equipment.
9. On March 4, 2019, DEQ staff conducted a PCE and met with CED staff, and their consultant to discuss the planned Facility modifications and current operations. CED provided project milestones and projected stack test date of August 2019.

10. On July 12, 2019 CED notified DEQ of the startup of K1 and K2 configured with the new emissions controls at the Facility.
11. On September 24 and September 25, 2019, CED performed stack testing at the Facility. On October 31, 2019, CED submitted the results of the stack to DEQ for review, which DEQ reviewed on December 3, 2019. CED's stack test report showed the Facility has returned to compliance and the emissions at the Facility were in compliance with the modified 2018 Permit.
12. On April 15, 2020, CED submitted the 2019 Annual Update/Emissions Statement report to DEQ. The report indicated CED exceeded the hours of operation in the 2018 Permit for the 2019 calendar year. In the report, CED indicated that the emissions for K1 and K2 exceeded the emissions limits in Permit Condition 18. Reported emissions for 2019 were as follows: K1 / PM = 4.4 tons/yr, PM-2.5 = 4.2 tons/yr, and PM-10 = 4.2 tons/yr, K2 / PM = 5.9 tons/yr; PM-2.5 = 5.6 tons/yr; and PM-10 = 5.6 tons/yr.
13. Permit Condition 17 states that: "The rotary kilns (K1 and K2) may only operate for a combined numbers of hours producing Product A and Product B according to the following equation:  $(H_A/H_{A1MAX}) + (H_B/H_{B1MAX}) \leq 1$ , where  $H_A$  = Annual hours of Product A production, regardless of kiln;  $H_{A1MAX} = 16,800$  = Maximum annual permissible hours of Product A production;  $H_B$  = Annual hours of Product B production, regardless of kiln;  $H_{B1MAX} = 8,480$  = Maximum annual permissible hours of Product B production; Annual hours shall be calculated monthly as the sum of each consecutive 12-month period".
14. Permit Condition 18 states that: "Process Emission Limits – Emissions from the operation of each rotary kiln (K1 and K2) shall not exceed the limits specified below: Particulate Matter (PM) 0.01 gr/dscf and 3.2 tons/yr; PM-10 (filterable and condensable) 0.01 gr/dscf and 3.2 tons/yr; PM-2.5 (filterable and condensable) 0.01 gr/dscf and 3.2 tons/yr".
15. Based on the results of the September 21, 2017 stack test, the documentation submitted on November 20, 2017, the January 9, 2018 and March 4, 2019 meetings, and documentation submitted on April 15, 2020, the Board concludes that CED has violated 9 VAC 5-50-260.A, Permit Condition 12, Permit Condition 17, and Permit Condition 18, as described in paragraphs C(2) through C(14) above.
16. Based on the issuance of the July 6, 2018 modified Permit, and the September 24 and September 25, 2019 passing stack test results, CED has returned to compliance at the Facility.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders CED, and CED agrees to:

1. Pay a civil charge of \$59,332 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
June 30, 2020	\$ 19,777.33 or balance
July 30, 2020	\$ 19,777.33 or balance
August 30, 2020	\$ 19,777.34 or balance

2. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by CED. Within 15 days of receipt of such letter, CED shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
3. 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

4. CED 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, CED 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 CED for good cause shown by CED, 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. AVRO000765-001 dated December 19, 2017. 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, CED admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. CED 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. CED 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 CED 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. CED 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. CED shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CED 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 CED. Nevertheless, CED 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 CED has completed all of the requirements of the Order;
  - b. CED 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 CED.

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

And it is so ORDERED this 18<sup>th</sup> day of May, 2020.



Amy T. Owens, Regional Director  
Department of Environmental Quality

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C.E.D. Enterprises, Inc. voluntarily agrees to the issuance of this Order.

Date: 05/14/2020 By: Michael L. Cole, President  
(Person) (Title)  
C.E.D. Enterprises, Inc.

Commonwealth of ~~Virginia~~ <sup>Ohio</sup>  
City/County of Akron/Summit

The foregoing document was signed and acknowledged before me this 14<sup>th</sup> day of May, 2020, by Michael L. Cole who is President of C.E.D. Enterprises, Inc. on behalf of the corporation.

Jennifer L. Leon  
Notary Public  
Jennifer L. Leon

Registration No.

My commission expires: January 17, 2022

Notary seal:

