



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462  
(757) 518-2000 Fax (757) 518-2009  
www.deq.virginia.gov

Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

Craig R. Nicol  
Regional Director

## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**CSI Tunnel Systems, Inc. (USED IN VA BY: ConcreteSystems, Inc.)  
FOR  
CSI Tunnel Systems, Inc.  
Registration No. 61802**

### 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 CSI Tunnel Systems, Inc. (USED IN VA BY: ConcreteSystems, Inc.), regarding CSI Tunnel Systems, 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. "CSI" means CSI Tunnel Systems, Inc. (USED IN VA BY: ConcreteSystems, Inc.), a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. CSI 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 CSI concrete batch plant located at 1010 Bells Mill Road in Chesapeake, Virginia.
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 a Minor New Source Review permit to construct and operate a concrete batch plant, which CSI applied for and DEQ is processing under air registration no. 61802.
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. CSI owns and operates the Facility in the Chesapeake, Virginia. The Facility is the subject of the Permit, which will allow CSI to construct and operate a concrete batch plant.
2. During a permitting and compliance meeting on July 18, 2018, CSI notified DEQ that a concrete batch plant was under construction.
3. On July 20, 2018, Department staff visited the Facility for compliance with the requirements of the Virginia Air Pollution Control Law and the Regulations. During the visit, Department staff observed that the concrete batch plant was under construction (e.g. material bins and silos, a concrete batch mixer, and other support equipment in place).
4. DEQ files did not issue an air permit to construct a stationary source at the Facility. Nor did CSI notify DEQ of the commencement of construction of the new concrete batch plant at the Facility.

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 July 24, 2018, based on the evaluation and follow-up information, the Department issued Notice of Violation No. ATRO000972 to the CSI for the violations described in paragraphs C(2) through C(7), above.
9. On July 30, 2018, CSI submitted a written response to the NOV maintaining that it had contracted with a consultant to ensure compliance with all regulatory requirements prior to construction and non-compliance may have resulted from a misunderstanding between the corporation and consultant. CSI indicated that prior to obtaining the air permit, it had not begun operating or producing any product and upon learning that it needed an air permit, immediately submitted an air permit application. An air application for the Facility was submitted on July 20, 2018. On October 2, 2018, CSI was issued an air Permit.
10. Based on the results of the meetings on July 18<sup>th</sup> and 20<sup>th</sup> and the documentation submitted on July 30, 2018, the Board concludes that CSI has violated 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(2) through C(7), above.
11. CSI has submitted documentation that verifies that the violations described in paragraphs C(2) and C(7), 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 CSI, and CSI agrees to pay a civil charge of \$10,423.00 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

CSI Tunnel Systems, Inc. (USED IN VA BY: ConcreteSystems, 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, CSI 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 CSI for good cause shown by CSI, 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. ATRO000972 dated July 24, 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, CSI admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. CSI 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. CSI 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 CSI 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. CSI 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. CSI shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CSI 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.

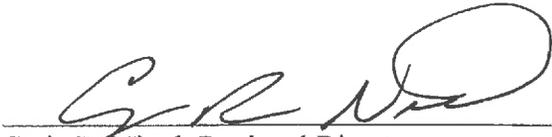
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and CSI. Nevertheless, CSI agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after CSI has completed all of the requirements of the Order;
  - b. CSI 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 CSI.

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

And it is so ORDERED this 19 day of November, 2018.

  
\_\_\_\_\_  
Craig R. Nicol, Regional Director  
Department of Environmental Quality

------(Remainder of Page Intentionally Blank)-----

CSI Tunnel Systems, Inc. (USED IN VA BY: ConcreteSystems, Inc.) voluntarily agrees to the issuance of this Order.

Date: 11-14-2018 By: Walter Siryk EVP/COO  
(Person) (Title)  
CSI Tunnel Systems, Inc. (USED IN VA BY: ConcreteSystems, Inc.)

~~Commonwealth of Virginia~~  
State of New Hampshire  
City/County of Hillsborough

The foregoing document was signed and acknowledged before me this 14<sup>th</sup> day of November, 2018, by Walter Siryk who is EVP/COO of CSI Tunnel Systems, Inc. (USED IN VA BY: ConcreteSystems, Inc.), on behalf of the corporation.

Patricia Fall  
Notary Public

61802  
Registration No.

My commission expires 12/13/20

Notary seal:

