



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
O-N MINERALS CHEMSTONE COMPANY
FOR
WINCHESTER AGGREGATE PLANT
Registration No. 80900**

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 O-N Minerals (Chemstone) Company, regarding O-N Minerals (Chemstone) Company – Winchester Aggregate Plant, 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. “CFR” means the Code of Federal Regulations, as incorporated into the Regulations.
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 O-N Minerals Winchester Aggregate Plant, located at 508 Quarry Lane in Frederick County, Virginia.
6. “O-N Minerals” means O-N Minerals (Chemstone) Company, a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. O-N Minerals is a “person” within the meaning of Va. Code § 10.1-1300.
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 permit to construct and operate a limestone processing facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to O-N Minerals on August 26, 2019.
11. “VRO” means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
12. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” mean 9 VAC 5 chapters 10 through 80.
13. “Va. Code” means the Code of Virginia (1950), as amended.
14. “VAC” means the Virginia Administrative Code.
15. “Virginia Air Pollution Control Law” means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
16. “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. O-N Minerals owns and operates the Facility in the Frederick County, Virginia. The Facility is the subject of the Permit that allows the construction and operation of a milled limestone plant and a stone pulverizing plant.
2. On November 21, 2019, Department staff conducted a PCE of the VEE Report for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:

O-N Minerals staff conducted the VEE on October 17 and 18, 2019. The smoke-reader's certification was not included with the submittal. The last VEE on record for fugitive emissions from the screening operation (FG-SC-3) was performed for O-N Minerals on September 13 and 14, 2011.

3. Permit Condition 45 states, "the permittee shall conduct additional VEEs for fugitive emissions from the screening operation (FG-SC-3) at a frequency not to exceed every five years from September 14, 2011 in accordance with 40 CFR 60, Appendix A, Method 9..." Method 9, paragraph 3.1, states: "The certification shall be valid for a period of 6 months, at which time the qualification procedure must be repeated by any observer in order to retain certification."
4. On December 3, 2019, based on the evaluation and follow-up information, the Department issued Notice of Violation No. AVRO001332-001 to O-N Minerals for the violations described in paragraphs C(2) and C(3), above.
5. On December 4, 2019, O-N Minerals submitted a written response to the NOV.
6. Based on the results of the PCE, the Board concludes that O-N Minerals has violated Permit condition 45, as described in paragraphs C(2) and C(3), above.
7. O-N Minerals has submitted documentation that verifies that the violations described in paragraphs C(2) and C(3), 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 O-N Minerals (Chemstone) Company and O-N Minerals (Chemstone) Company agrees to:

1. Pay a civil charge of \$9,620.00 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

O-N Minerals (Chemstone) Company shall include its Federal Employer Identification Number (FEIN) [(xx-xxxxxxx)] 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, O-N Minerals 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 O-N Minerals for good cause shown by O-N Minerals, 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. AVRO001332 dated December 3, 2019. 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, O-N Minerals (Chemstone) Company admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. O-N Minerals (Chemstone) Company 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. O-N Minerals (Chemstone) Company 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 O-N Minerals (Chemstone) Company 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. O-N Minerals (Chemstone) Company 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. O-N Minerals (Chemstone) Company shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. O-N Minerals (Chemstone) Company 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 O-N Minerals (Chemstone) Company. Nevertheless, O-N Minerals (Chemstone) Company 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 O-N Minerals (Chemstone) Company has completed all of the requirements of the Order;
 - b. O-N Minerals (Chemstone) Company 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 O-N Minerals (Chemstone) Company.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve O-N Minerals (Chemstone) Company 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 O-N Minerals (Chemstone) Company 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 O-N Minerals (Chemstone) Company 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 O-N Minerals (Chemstone) Company to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of O-N Minerals (Chemstone) Company.
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, O-N Minerals (Chemstone) Company voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23rd day of July, 2020.



Amy T. Owens, Regional Director
Department of Environmental Quality

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O-N Minerals (Chemstone) Company voluntarily agrees to the issuance of this Order.

Date: 7/1/2020 By: [Signature], Sr. VP Legal
(Person) (Title)
O-N Minerals (Chemstone) Company

PENNSYLVANIA
Commonwealth of ~~Virginia~~
City/County of ALLEGHENY

The foregoing document was signed and acknowledged before me this 1st day of July, 2020, by KEVIN J. WYATE who is SR VP, LEGAL of **O-N Minerals (Chemstone) Company**, on behalf of the corporation.

[Signature]
Notary Public
1300809
Registration No.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Lara Heather Sees, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Sept. 14, 2020
MEMBER PENNSYLVANIA ASSOCIATION OF NOTARIES

My commission expires: 9/14/2020

Notary seal:

