COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Douglas W. Domenech
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STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
S. B. COX READY MIX, INC.
Registration Number 52215

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 S. B. Cox Ready Mix, Inc., 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. "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 S. B. Cox Ready Mix, Inc. facility, located at 16460 Washington Hwy., Doswell, Virginia.

5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1–1309.

6. "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.

7. "PCE" means a partial compliance evaluation by DEQ staff.

8. "Permit" means a New Stationary Source (NSR) Permit, to modify and operate a petroleum concrete batch plant, which was issued under the Virginia Air Pollution Control Law and the Regulations to S. B. Cox, Inc. on May 30, 2008.

9. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.

11. "S. B. Cox" means S. B. Cox Ready Mix, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. S. B. Cox is a "person" within the meaning of Va. Code § 10.1-1300

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.

SECTION C: Findings of Fact and Conclusions of Law

1. S. B. Cox owns and operates a concrete batch plant located at 16460 Washington Highway, in Doswell, Virginia (Facility). The Facility is subject to a NSR Permit, which was issued on May 30, 2008. The Facility is considered a synthetic minor as the emissions limits is 2.1 tons per year for PM and 0.9 tons per year for PM10/PM2.5 with process limitations and air pollution controls. The Facility uses fabric filters for loading the cement and fly ash in addition to wet suppression for fugitive emissions.

2. On January 23, 2013, the Department received the Annual Update for the Facility. DEQ staff conducted a PCE of the Annual Update. Based on the information provided in the Annual Update, Department staff made the following observation:

a) The Facility produced 27,046 cubic yards of concrete during calendar year 2012; and

b) The calculated emissions for the calendar year of 2012 were 2.294 tons of PM and 0.960 tons of PM10/PM2.5.

3. Condition No. 7 of the Permit states: "Production – The production of concrete shall not exceed 50,000 tons per year (25,000 cubic yards per year), calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months. (9 VAC 5-80-1180)"

4. Condition No. 8 of the Permit states: "Process Emission Limits – Emissions from the operation of the truck mix concrete batch plant shall not exceed the limits specified below:

a. Particulate Matter (PM)	16.9 lbs/hr	2.1 tons/yr
b. PM10/PM2.5	7.1 lbs/hr	0.9 tons/yr

These emissions are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits may be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Conditions 2, 3, 4 and 7. (9 VAC 5-80-1180 and 9 VAC 5-50-260)"

5. Va. Code § 10.1322 states that failure to comply with any condition of a permit shall be considered a violation of the Air Pollution Control Board.

6. On April 4, 2013, based on the Annual Update submitted to DEQ by S. B. Cox, DEQ issued Notice of Violation No. APRO8652, for the violations described in paragraph C(2), above.

7. On July 11, 2013, S. B. Cox met with DEQ staff and discussed the violations and resolution of the violations. During the meeting, S. B. Cox provided information that the Facility had exceeded the concrete production limits during the months of January and February 2013, and had returned to compliance in March 2013. S. B. Cox agreed to submit a Form 7 in order to modify the Permit to allow an increase in concrete production and resulting increase in emission limits.

8. Based on the information contained in the Annual Update provided to DEQ on January 23, 2013 and the meeting on July 11, 2013, the Board concludes that S. B. Cox violated Condition No. 7 (9 VAC 5-80-1180) and No. 8 (9 VAC 5-80-1180 and 9 VAC 5-50-260) of the Permit, and Va. Code § 10.1-1322, as described in paragraph C(2) through C(5), and C(7) above.

9. On November 13, 2013, S. B. Cox's consultant submitted a complete application for a Permit modification to address the violations described in paragraphs C(2) and C(7) above.

SECTION D: Agreement and Order

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

1. Pay a civil charge of **$1,255** 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", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

S. B. Cox 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 S. B. Cox, for good cause shown by S. B. Cox, 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, S. B. Cox admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact, and conclusions of law in this Order.

4. S. B. Cox 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. S. B. Cox declares it has received fair and due process under the Administrative Process Act and 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 S. B. Cox 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. S. B. Cox 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. S. B. Cox shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. S. B. Cox 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 S. B. Cox. Nevertheless, S. B. Cox 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 S. B. Cox has completed all of the requirements of the Order; or

    b. S. B. Cox 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 S. B. Cox.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve S. B. Cox 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 S. B. Cox 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 S. B. Cox 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 S. B. Cox to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of S. B. Cox.

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, S. B. Cox voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 11th day of DECEMBER, 2013.

Michael P. Murphy, Regional Director
Department of Environmental Quality

S. B. Cox Ready Mix, Inc., voluntarily agrees to the issuance of this Order.

Date: 11/21/13 By: Morgan S. Nelson, President
(Person) (Title)
S. B. Cox Ready Mix, Inc.

State of Virginia
City/County of Goochland

The foregoing document was signed and acknowledged before me this 21st day of November, 2013, by Morgan S. Nelson, who is
(name)
President of S. B. Cox Ready Mix, Inc., on behalf of the corporation.

Notary Public

7506432
Registration No.

My commission expires: 7-31-2015

Notary seal:

Kelli Grogan Mills
Commonwealth of Virginia
Notary Public
Commission No. 7506432
My Commission Expires 7/31/2015