

FILED

**STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION**

SEP 9 2019

VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Agency of Natural Resources,)
Petitioner,)
)
v.)
)
Imerys Talc Vermont, Inc.,)
Respondent.)

Docket # 99-8-19 Vtec

FINDINGS

PURSUANT TO 10 V.S.A. §8008(d) THE COURT FINDS AS FOLLOWS:

1. The Administrative Order in this matter has been properly served on the Respondent(s) in accordance with 10 V.S.A. §8008(a).
2. The Respondent has not timely requested a hearing in this matter in accordance with 10 V.S.A. §8008(b).
3. The order otherwise meets the requirements of 10 V.S.A. Chapter 201.
4. In a related bankruptcy action in the United States Bankruptcy Court for the District of Delaware, Case No. 19-10291 (LSS), the Bankruptcy Court issued an April 24, 2019 Order approving a Stipulation between the parties in the bankruptcy action that the Agency of Natural Resources may proceed with this Administrative Order solely for the purpose of obtaining a judgment fixing the civil penalty.

ORDER

By the Court's signature below, the Administrative Order in this matter, filed with the Superior Court, Environmental Division, on August 23, 2019, has become a final Judicial Order pursuant to 10 V.S.A. §8008(d)(2).

Dated this 9th day of September 2019.

Thomas G. Walsh, Judge
Vermont Superior Court
Environmental Division

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No.

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.

IMERYS TALC VERMONT, INC.,
Respondent

ADMINISTRATIVE ORDER

Having found that Imerys Talc Vermont, Inc. ("Respondent") has committed a violation as defined in 10 V.S.A. § 8002(9), the Secretary ("Secretary") of the Agency of Natural Resources ("Agency"), pursuant to the authority set forth in 10 V.S.A. § 8008, hereby issues the following Administrative Order:

VIOLATIONS

1. Air Pollution Control Permit to Construct and Operate #AOP-16-024, Condition 17: Exceedances of emission limits for particulate matter

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. Respondent owns and operates a quarry and talc processing facility at 73 East Hill Road, Ludlow, Vermont (the "Facility").
2. The Facility is subject to Air Pollution Control Permit to Construct and Operate # AOP-16-024, dated January 27, 2017 (the "Permit").
3. Condition 17 of the Permit establishes particulate matter emissions limits for each unit at the Facility.
4. Under the Permit, particulate matter emissions limits for Air Classifier Mill (ACM) (DC-111) are equal to 0.007 grains per dry standard cubic foot (gr/dscf) and 0.15 pounds per hour (lbs/hr). Particulate matter emissions limits for the Pellet Dryer (DC-116) are equal to 0.007 gr/dscf and 0.71 lbs/hr.

5. On June 6-8, 2018, pursuant to Condition 25 of the Permit, Respondent tested the dust collectors and processing equipment at the Facility to assess compliance with particulate matter emissions limits.
6. The testing included assessing compliance of the Air Classifier Mill (ACM) (DC-111) and the Pellet Dryer (DC-116), which were installed in the spring of 2017 as part of the so-called Genesis Project.
7. The test results indicated that the concentration of particulate matter emitted from the Air Classifier Mill (ACM) (DC-111) was 0.041 gr/dscf, with an emission rate of 1.13 lbs/hr. The concentration of particulate matter emitted from the Pellet Dryer (DC-116) was 0.13 gr/dscf, with an emission rate of 12.5 lbs/hr.
8. Following the test, Respondent took the Air Classifier Mill (ACM) (DC-111) and Pellet Dryer (DC-116) out of operation, investigated the cause of the exceedances, and performed certain repairs. With regards to the Air Classifier Mill (ACM) (DC 111), Respondent partially dismantled the filter and reinstalled improperly installed bolts that Respondent believed were causing non-compliance with particulate matter emissions. With regards to the Pellet Dryer (DC-116), Respondent replaced damaged filter bags, modified the dryer bounce and bed depth and adjusted internal baffles, air dampers, and fan speeds, all to balance airflows and eliminate the high temperatures that damaged the filter bags that Respondent believed were causing non-compliance with particulate matter emissions.
9. On September 11-12, 2018, Respondent conducted a second test of the Air Classifier Mill (ACM) (DC-111) and Pellet Dryer (DC-116) to assess compliance with the Permit's particulate matter emissions limits. With limited and temporary exceptions, the Air Classifier Mill (ACM) (DC-111) and Pellet Dryer (DC-116) were not in operation between the two testing events, but were placed back into operation to conduct the test.
10. The results of the second test indicated that the concentration of particulate matter emitted from the Air Classifier Mill (ACM) (DC-111) was 0.009 gr/dscf, with an emission rate of 0.236 lbs/hr. The concentration and rate of particulate matter emission from the Pellet Dryer (DC-116) were below the Permit limits.
11. The above conduct constitutes two violations of Permit Condition 17, but are considered a single "prior violation" in future state proceeding that require consideration of Respondent's past record of compliance.

12. Following the second test, Respondent took the Air Classifier Mill (ACM) (DC-111) out of operation and performed additional repairs.
13. On January 10, 2019, Respondent conducted a third test of the Air Classifier Mill (ACM) (DC-111) to assess compliance with the Permit's particulate matter emissions limits. The test results indicated that the concentration and rate of particulate matter emitted from the Air Classifier Mill (ACM) (DC-111) were below the Permit limits.
14. On February 13, 2019, Respondent filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Petition") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").
15. Under the rules and regulations applicable to Respondent as a result of the Bankruptcy Petition, Respondent is prohibited from entering settlement agreements without advance approval from the Bankruptcy Court.
16. But for the restrictions on Respondent associated with its filing of the Bankruptcy Petition, Respondent has expressed a desire to enter into an Assurance of Discontinuance with the Agency.
17. On April 24, 2019, the Bankruptcy Court entered an order approving a Stipulation between Respondent and the Agency pursuant to which the Agency was permitted to seek to obtain a judgment fixing the penalties for the violation set forth herein notwithstanding the automatic stay provided under 11 U.S.C. § 362(a).
18. The Agency and Respondent recognize that payment hereunder shall be made in accordance with Respondent's confirmed plan of reorganization to be filed in its pending Chapter 11 bankruptcy case.

ORDER

- A. Respondent shall pay a total penalty of \$10,000.00. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Administrative Assistant
Agency of Natural Resources
Environmental Compliance Division
1 National Life Drive, Davis 2
Montpelier, VT 05620-3803

The Secretary reserves the right to augment the above stated penalty based upon the evidence

adduced at the hearing in this matter. The penalty may be increased by the total costs incurred by the Secretary for the enforcement of this matter, by the total amount of economic benefit gained by the Respondent from the violations(s) and by further consideration of any other component of penalty found in 10 V.S.A. § 8010, each according to proof at hearing.

**RESPONDENT'S RIGHT TO A HEARING
BEFORE THE ENVIRONMENTAL COURT**

The Respondent has the right to request a hearing on this Administrative Order before the Environmental Court under 10 V.S.A. § 8012 by filing a Notice of Request for Hearing within fifteen (15) days of the date the Respondent receives this Administrative Order. The Respondent must timely file a Notice of Request for Hearing with both the Secretary and the Environmental Court at the following addresses:

1. Secretary, Agency of Natural Resources
c/o: Enforcement & Litigation Section
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

2. Clerk, Superior Court, Environmental Division
32 Cherry St. 2nd Floor, Suite 303
Burlington, VT 05401

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

This Administrative Order shall become effective on the date it is received by the Respondent unless the Respondent file a Notice of Request for Hearing within fifteen (15) days of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request for Hearing by the Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondent does not make a timely filing of a Notice of Request for Hearing, this Administrative Order shall become a final Judicial Order when filed with and signed by the Environmental Court.

COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

If the Respondent fails or refuse to comply with the conditions of a final Judicial Order, the Secretary shall have cause to initiate any further legal action against the Respondent including but

not necessarily limited to, those available to the Secretary pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated at Montpelier, Vermont this 22 day of July, 2019:

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By: 
Emily Boedecker, Commissioner Department

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.

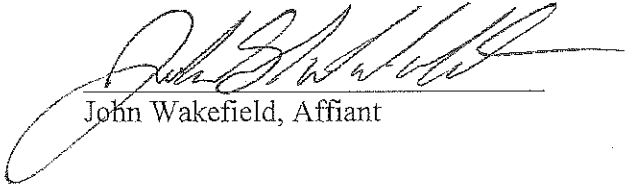
IMERYS TALC VERMONT, INC.,
Respondent

Affidavit of John Wakefield

I, John Wakefield, do attest that the following is true to the best of my knowledge:

1. I am of legal age and a resident of the State of Vermont.
2. I am employed by the Agency of Natural Resources (Agency) as the Section Chief of the Compliance Section in the Air Quality and Climate Division of the Department of Environmental Conservation.
3. Based upon review of the relevant Air Quality and Climate Division program file and conversations with witnesses and Agency staff, the violations described in the Statement of Facts section of the above-entitled Administrative Order occurred during the time periods set forth therein.

Dated at Montpelier, Vermont this 17 day of JULY, 2019.


John Wakefield, Affiant

Subscribed and sworn before me on the 17th of July, 2019.


Notary Public

My Commission Expires: 1-31-21