



Air Resources Board



Mary D. Nichols, Chair

1001 I Street • P.O. Box 2815

Sacramento, California 95812 • www.arb.ca.gov

Matthew Rodriguez

Secretary for

Environmental Protection

Edmund G. Brown Jr.

Governor

November 10, 2015

Mr. Robert Scaglione
Air Pollution Control Officer
Mendocino County Air Quality
Management District
306 East Gobbi Street
Ukiah, California 95482

Dear Mr. Scaglione:

On October 14, 2015, in response to numerous complaints, Air Resources Board (ARB) staff inspected an asphalt production facility located at:

37342 Covelo Road
Willits, California 95490

The facility is permitted to Grist Creek Aggregates and is owned and operated by Mercer-Fraser Company. ARB staff identified numerous violations of the Authority to Construct (ATC) permit number 1416-5-01-15-26 issued by the Mendocino County Air Quality Management District (Mendocino County AQMD), including the operation of an unpermitted rubberized asphalt heating and blending unit. A copy of the investigation report is enclosed. The names of complainants have been redacted from this document to protect their confidentiality.

State law broadly establishes liability for air quality violations resulting in emissions from illegal operation of equipment. Grist Creek Aggregates, as the permitted entity, and Mercer-Fraser Company, as the asphalt plant operator, share the legal obligation to operate the asphalt production plant in compliance with federal, State and local emission control laws and regulations. While Mercer-Fraser Company is not the permitted entity, it is nonetheless the actual operator and as such, is responsible for compliance with air quality regulations at the asphalt production facility. State law does not recognize private-party contractual obligations as a valid justification for a violation of State law.

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.*

California Environmental Protection Agency

Mendocino County AQMD issued a number of notices of violation(s) (NOV) to Grist Creek Aggregates for violating ATC conditions and for operating an unpermitted rubber heating and blending unit. By accepting operational restrictions in the ATC and conducting operations thereunder, both Grist Creek Aggregates and Mercer-Fraser Company are presumed aware of those restrictions when they violated them. Both Grist Creek Aggregates and Mercer-Fraser Company were therefore negligently violating State law by operating both the asphalt production facility, in violation of the ATC, and the rubber heating and blending unit, in violation of Mendocino County AQMD permitting rules.

State law establishes civil and criminal penalties for negligent emissions of air contaminants of up to \$25,000 or up to nine months imprisonment per day per violation (California Health and Safety Code (HSC) section 42400.1 and 42402.1). For each day the rubber heating and blending unit was operated in violation through October 21, 2015, ARB staff encourages Mendocino County AQMD to pursue negligent violations of State law on both of the following two counts:

1. Negligent emission of air contaminants: Operation of the asphalt production plant in violation of ATC condition XIX(D)(6), resulted in emissions of air contaminants. All air contaminant emissions from the asphalt plant while the unpermitted rubber heating and blending unit was in use are emitted in negligent violation of the ATC and Mendocino County AQMD rule 1-240(b) and are thus illegal emissions and are subject to penalties for each day the rubber heating and blending unit operated; and
2. Negligent emission of air contaminants: Operation of an unpermitted rubber heating and blending unit, resulted in air contaminant emissions; all air contaminant emissions from the rubber heating and blending unit are emitted in negligent violation of Mendocino County AQMD rule number 1-240 –“PERMIT TO OPERATE” and are thus illegal emissions and are subject to penalties for each day the rubber heating and blending unit operated.

Emissions from the asphalt plant, while in production of rubberized asphalt cement, and from the rubber heating and blending unit, after NOV number 15-042 was issued on October 21, 2015, represent willful and intentional violations of State law. As you know, the State of California considers willful and intentional violations of California's air quality rules and regulations to be a serious infraction subject to both civil and criminal penalties of up to \$75,000 per day of violation or up to one year imprisonment per day per violation (HSC 42400.3 and 42402.3). For each day violations occurred subsequent to October 21, 2015, ARB staff encourages Mendocino County AQMD to pursue willful and intentional violations of State law on both of the following two counts:

Mr. Robert Scaglione
November 10, 2015
Page 3

1. Willful and Intentional Emissions of Air Contaminants: Operation of the asphalt production plant in violation of ATC condition XIX(D)(6) beyond October 21, 2015, resulted in emissions of air contaminants. All air contaminant emissions from the asphalt plant while the unpermitted rubber heating and blending unit was in use are emitted in willful and intentional violation of the ATC and Mendocino County AQMD rule 1-240(b) and are thus illegal emissions and are subject to penalties for each day the rubber heating and blending unit operated; and
2. Willful and Intentional Emissions of Air Contaminants: Operation of an unpermitted rubber heating and blending unit beyond October 21, 2015, resulted in air contaminant emissions; all air contaminant emissions from the rubber heating and blending unit are emitted in willful and intentional violation of Mendocino County AQMD rule number 1-240 – “PERMIT TO OPERATE” and are thus illegal emissions and are subject to penalties for each day the rubber heating and blending unit operated.

ARB's investigation is ongoing. ARB reserves the right to identify and resolve violations of California's air quality rules and regulations independently of any actions taken by the Mendocino County AQMD. I look forward to discussing these violations with you in greater detail, as well as Mendocino County AQMD's efforts to resolve the violations with penalties adequate to deter future violations of this nature. Should you need additional assistance, please do not hesitate to contact me at (916) 229-0756.

Sincerely,



Jeff Lindberg, Manager
District Support Section

Enclosure.

cc: Mr. Aron Livingston
Assistant Chief Counsel