



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

5636 Southern Boulevard  
Virginia Beach, VA 23462  
www.deq.state.va.us

Robert G. Burnley  
Director

Francis L. Daniel  
Tidewater Regional Director  
(757) 518-2000

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION

#### SPECIAL ORDER BY CONSENT WITH ATLANTIC WOOD INDUSTRIES, INC.

#### SECTION A: Purpose

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and Atlantic Wood Industries, Inc., for the purpose of resolving certain alleged violations of environmental law and/or regulations.

#### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in the Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in the Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Atlantic Wood" means Atlantic Wood Industries, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Regulation" means 9 VAC 25-31-10 *et seq.*, the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
8. "Permit" means VPDES Permit No. VA0004189.
9. "Facility" means the Atlantic Wood Industries, Inc. prestressed concrete facility located at 3950 Elm Avenue in Portsmouth, Virginia.

## **SECTION C: Findings of Fact and Conclusions of Law**

1. Atlantic Wood owns and operates a prestressed concrete facility located at 3950 Elm Ave. in Portsmouth, Virginia. The Facility is located adjacent to Paradise Creek and the Southern Branch Elizabeth River. The discharge of storm water runoff from the Facility is the subject of the Permit which was reissued on March 21, 2001 and expires on March 21, 2006.
2. Section 62.1-44.5 of the Code, 9 VAC 25-31-50 of the Regulation and Part II.L of the Permit requires Atlantic Wood to comply with all conditions of the Permit in order to legally discharge from the Facility.
3. Subject to certain conditions and limitations, Part I.A of the Permit requires the Facility to monitor stormwater discharges from outfalls 001, 002, and 003 on a monthly basis for pH, oil and grease and total phenols; on a quarterly basis for copper (for all three outfalls) and zinc (001 only); semiannually for pentachlorophenol; and annually for total suspended solids and to report the monitoring results to DEQ.
4. A review of rainfall records of the Portsmouth Weather Records Services indicates that in 13 months of the period from March, 2001 until May, 2003, rainfall events occurred for which Atlantic Wood failed to inspect their outfalls for a discharge.
5. During a June 2003 inspection, Atlantic Wood was unable to provide daily records of rainfall upon request as required by Part I.C.3.b of the Permit.
6. Part I.C.3.e.(a) of the Permit requires a quarterly visual examination of stormwater discharges. Atlantic Wood's records indicate that no visual examinations were performed in the first two quarters of 2003.
7. Part I.C.4.d(3) of the Permit requires that quarterly inspections of the entire Facility be made as required by the Facility's Storm Water Pollution Prevention Plan and that the inspections be documented. Atlantic Wood could produce no records to document these inspections for four quarters in 2002 and two quarters in 2003.
8. Part I.C. of the Permit requires that annual Toxics Monitoring Program (TMP) sample data be submitted, for each stormwater outfall, by February 10 of each calendar year. Atlantic Wood submitted the 2003 annual TMP data in May, 2003.
9. Atlantic Wood exceeded the Permit effluent limit for phenols at outfall 003 in July, 2003.
10. The alleged violations described above are cited in the following Notices of Violation: No. W2003-07-T-0001 issued on July 17, 2003, No. W2003-08-T-001, issued on August 8, 2003, No. W2003-09-T-0001, issued on September 2, 2003, and, No. W2003-10-T-0002, issued on October 16, 2003. Additional allegations were made in the Notices of Violation that have since been proven to be inaccurate. This order resolves all of the alleged violations identified in the Notices of Violation identified herein.

## **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Atlantic Wood, and Atlantic Wood agrees, to immediately comply with all the requirements of the Permit. In addition, the Board orders Atlantic Wood, and Atlantic Wood voluntarily agrees, to pay a civil charge of \$10,500 within 30 days of the effective date of the Order in settlement of the alleged violations cited in this Order. The payment shall include Atlantic Wood's Federal Identification Number and shall note that payment is being made as required by this Order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

## **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Atlantic Wood, for good cause shown by Atlantic Wood, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations specifically identified herein, including the alleged violations noted in the above cited Notices of Violation. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Atlantic Wood does not admit nor deny the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Atlantic Wood 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. Atlantic Wood declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, and the State Water 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 enforce this Order.
6. Failure by Atlantic Wood 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. Atlantic Wood 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 occurrence. Atlantic Wood shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Atlantic Wood shall notify the DEQ Regional Director in writing 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 within 72 hours of learning of any condition above, which Atlantic Wood intends 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, their 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 Atlantic Wood. Notwithstanding the foregoing, Atlantic Wood agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Atlantic Wood. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Atlantic Wood from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Atlantic Wood voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Sept. 1, 2004.

Francis L. Daniel

Francis L. Daniel, Tidewater Regional Director, for  
Robert G. Burnley, Director  
Department of Environmental Quality

Atlantic Wood voluntarily agrees to the issuance of this Order.

By: Ross F. Worsham

Date: 6/28/04

State of Georgia

County of Chatham

The foregoing document was signed and acknowledged before me this 28<sup>th</sup> day of  
June, 2004, by Ross F. Worsham, who is

Vice President of Atlantic Wood, on behalf of the Corporation.

Ivy K. Nettles  
Notary Public

My commission expires: My Commission Expires July 31, 2007

