



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

BAYSHORE CONCRETE PRODUCTS CORPORATION

Ground Water Withdrawal Permit No. GW0037900

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Bayshore Concrete Products Corporation for the purpose of resolving certain 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. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. 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 Va. 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. "Regulation" means 9 VAC 25-610-10 *et seq.* - the Ground Water Withdrawal Regulation.
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Permit" means Ground Water Withdrawal Permit No. GW0037900 which was issued November 1, 1995, modified October 1, 1998 and expired December 30, 2005.

SECTION C: Finding of Facts and Conclusions of Law

1. Bayshore Concrete Products Corporation ("Bayshore") owns and operates a precast concrete manufacturing facility located at 1134 Bayshore Road, Cape Charles ("facility"). Bayshore was subject to the Permit which authorized Bayshore to withdraw and use 27,700,000 gallons of ground water per year from the Upper Yorktown-Eastover ("UYE") and the Middle Yorktown-Eastover ("MYE") aquifers. The permitted withdrawal of ground water provided potable water for the facility and process water for the production of concrete.
2. The Permit specified that Bayshore's withdrawal of ground water should not exceed a total of 2,800,000 gallons in a calendar month and should originate from eight permitted wells identified as well numbers 1, 2, 3, 4, 5, 5b, 6, and 7. Well number 2 is an emergency back-up and is normally offline.
3. Bayshore was required to submit a new permit application to DEQ at least 270 days before the expiration date of the Permit. The permit application was due April 4, 2005.
4. On August 16, 2005 DEQ staff met with representatives of Bayshore for a routine pre-application meeting to discuss the issuance of a new permit. During the meeting Bayshore indicated that the well system at the facility consisted of a total of thirteen wells.
5. On September 14, 2005 Bayshore's consultant MSA, P.C., provided a site location map which revealed a total of seventeen wells at the facility including the eight permitted production wells referenced in paragraph 2 of this Order, five unpermitted production wells identified as 5c, 10a, 10b, 11, and 12, and four heat exchange closed-loop wells identified as GEO-1, GEO-2, GEO-3 and GEO-4.
6. DEQ staff reviewed agency facility files and determined that the four heat exchange closed-loop wells identified as GEO-1, GEO-2, GEO-3 and GEO-4 do not require a ground water withdrawal permit. Additionally, DEQ staff determined the following: (a) DEQ did not receive a request from Bayshore to modify the Permit to include the five additional wells; (b) DEQ did not receive

well construction reports from Bayshore for the five additional wells; (c) DEQ did not receive from Bayshore the geologist's and geophysical logs and the determination of the aquifer of withdrawal for DEQ review prior to installation of well pumps; (d) DEQ did not receive a new permit application from Bayshore at least 270 days prior to Permit expiration; and (e) Bayshore has been withdrawing ground water without a Permit from the five recently revealed production wells, in addition to the eight original production wells since the expiration of the Permit.

7. On January 9, 2006, DEQ issued Notice of Violation ("NOV") No. W2006-01-T-0001 advising Bayshore of the above referenced observations.
8. On January 11, 2006, Bayshore submitted an application for a new facility permit. As part of the permit application, Bayshore submitted water well completion reports for five unpermitted production wells indicating construction completion of the wells between 1998 and 2002. The completion reports indicated the following:

Well #	5c	10a	10b	11	12
Completion Date	10/16/02	12/16/98	2/02/00	1/27/00	10/19/02

9. By letter dated February 7, 2006, Bayshore responded to the NOV referenced in paragraph 7 of this Order. The response confirmed that Bayshore has a total of seventeen wells and that several of the recent wells at the facility were installed to replace 'un-usable' wells and the four heat exchange closed-loop wells are a part of a non-contact withdrawal and return closed-loop system.
10. At DEQ's request, on March 2, 2006, Bayshore provided facility ground water withdrawal reports which indicated withdrawal activity during January and February 2006 from at least nine of thirteen production wells.
11. Also at DEQ's request, on March 13, 2006, Bayshore provided facility ground withdrawal reports from January 2005 through December 2005. The reports indicated that Bayshore had been documenting the withdrawal of groundwater from wells 5c, 10a, 10b, 11, and 12 from August 2005 through February 2006. According to Bayshore, these wells were not fitted with meters until September 2005; therefore no prior withdrawal data was available for review.
12. 9 VAC 25-620-10 specifies that the Board has affirmed that the Eastern Shore of Virginia, contained within the boundaries of the counties of Northampton and Accomack and all towns within their geographical boundaries, and containing all aquifers within these boundaries located between land surface and basement rock, shall be subject to the Ground Water Act of 1992, which requires a permit for ground water withdrawal in a ground water management area.

13. § 62.1-258 of the Va. Code, 9 VAC 25-610-90(C)(1) of the Regulation, and Part I.1 of the Permit prohibits the withdrawal of ground water within a ground water management area without a permit. Bayshore violated the Va. Code, the Regulation, and the Permit by withdrawing ground water from unpermitted production wells 5c, 10a, 10b, 11, and 12 within a ground water management area. In addition, Bayshore violated the Va. Code by withdrawing ground water within a ground water management area without a permit from production wells 1, 3, 6, 7, 10a, 10b, 11, and 12 during the month of January 2006 and 1, 3, 5c, 6, 7, 10a, 10b, 11, and 12 during the month February 2006 after the Permit expiration date of December 30, 2005.
14. 9 VAC 25-610-90(D) of the Regulation and Part I.9 of the Permit required Bayshore to submit a new permit application at least 270 days before the expiration date of the Permit. The permit application was due no later than April 4, 2005. Bayshore violated the Regulation and the Permit by failing to submit a timely permit application. DEQ received Bayshore's new permit application on January 11, 2006.
15. Part II.5 of the Permit specified that Bayshore shall provide well completion reports to DEQ within 30 days of completion of the well prior to any withdrawal from the well constructed after the date of the Permit. Bayshore violated the Permit by failing to provide well completion reports for the five unpermitted production wells identified as 5c, 10a, 10b, 11, and 12 within 30 days of completion of the wells prior to any withdrawals from the wells.
16. Part II.6 of the Permit required Bayshore to submit geologists and geophysical logs and determination of the aquifer of withdrawal for DEQ concurrence prior to installation of well pumps for wells constructed after the date of the Permit. Bayshore violated the Permit by failing to provide geologists and geophysical logs and determination of the aquifer of withdrawal for DEQ concurrence prior to installation of well pumps to DEQ for the five unpermitted production wells identified as 5c, 10a, 10b, 11, and 12.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d) orders Bayshore, and Bayshore agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders Bayshore, and Bayshore voluntarily agrees to pay a civil charge of \$39,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include Bayshore's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer 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 Bayshore, for good cause shown by Bayshore, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notice 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, Bayshore admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Bayshore 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. Bayshore 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 Bayshore 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. Bayshore 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 act of God, war, strike, or such other occurrence. Bayshore shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Bayshore shall notify 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 24 hours of learning of any condition above, which Bayshore 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 Bayshore. Notwithstanding the foregoing, Bayshore 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 Bayshore. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Bayshore 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, Bayshore voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7 day of September, 2006.

Francis L. Daniel
Francis L. Daniel, Tidewater Regional Director
for David K. Paylor, Director
Department of Environmental Quality

Bayshore voluntarily agrees to the issuance of this Order.

By: John E. Dobbs
Date: 5-19-06

Commonwealth of Virginia
City/County of Northampton

The foregoing document was signed and acknowledged before me this 19th day of

May, 2006, by JOHN E. DOBBS, who is
(name)

President of Bayshore Concrete Products Corporation, on behalf of Bayshore.
(title)

Chalmers E. Clayton
Notary Public

My commission expires: April 30, 2008

APPENDIX A

Bayshore shall, in accordance with the provisions of the State Water Control Law, the Ground Water Management Act of 1992, and the Ground Water Withdrawal Regulation, comply with the following regarding the withdrawal of ground water at the Cape Charles facility:

1. Bayshore shall withdraw no more than 27,700,000 gallons of ground water per year to provide necessary process water for the production of concrete and potable water at the Cape Charles facility. Other beneficial uses are not authorized by this Order.
2. The withdrawal of ground water shall originate from the following withdrawal point(s):

Owner Well #/Name	DEQ Well#	Depth	Aquifer
1 (Shop)	165-381	122'	UYE
2 (Gate)	165-110	230'	MYE
3 (Backfield)	165-383	120'	UYE
4 (Ice House)	165-111	200'	MYE
5 (Propane)	165-382	200'	MYE
5b (Girder)	165-390	200'	MYE
5c (Girder)	165-464	200'	MYE
6 (Poles)	165-384	220'	MYE
7 (Welding)	165-389	220'	MYE
10a (Boiler)	165-465	200'	MYE
10b (New Boiler Room)	165-466	220'	MYE
11 (New Restroom)	165-467	200'	MYE
12 (Aggregate Bins Well)	165-468	200'	MYE

3. Total withdrawals from the wells referenced in paragraph 2 of this Appendix A shall not exceed 2,800,000 gallons in a calendar month.
4. Bayshore shall comply with the withdrawal limits which are assigned for monthly and yearly usage for the wells as grouped by aquifer as follows:

Aquifer	Wells	Monthly Withdrawal Limit	Annual Withdrawal Limit
UYE	1 & 3	1,700,000 gallons	16,500,000 gallons
MYE	2, 4, 5, 5b, 5c, 6, 7, 10a, 10b, 11, 12	1,100,000 gallons	11,200,000 gallons

5. Water use from each well and total system water use shall be recorded monthly and reported on forms provided by DEQ to the Tidewater Regional Office by the tenth day of each month for the respective previous month. Records of water use shall be maintained by Bayshore as required by the Ground Water Withdrawal Regulation.

6. Each well referenced in paragraph 2 of this Appendix A shall have in line totalizing flow meters to read gallons, cubic feet or cubic meters. Such meters shall produce volume determinations within plus or minus 10% of actual flows. A defective meter or other device must be repaired or replaced within 30 days of meter failure. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in ground water withdrawal reports.
7. Each well referenced in paragraph 2 of this Appendix A shall be equipped in a manner such that water levels can be measured during pumping and non-pumping periods without dismantling any equipment. Any opening for tape measurement of water levels shall have an inside diameter of 0.5 inches and be sealed by a removable plug or cap. Bayshore shall provide a tap for taking raw water samples from each permitted well.
8. Bayshore shall notify DEQ in writing and gain staff approval of any change in the status, construction or pump setting of wells referenced in paragraph 2 of this Appendix A. A revised water well completion report form must be submitted to DEQ within 30 days of any change in the event that the physical construction of a well is altered or the pump setting in the well is changed.
9. Bayshore shall continue to collect a ground water quality sample from wells # 3 and # 7 referenced in paragraph 2 of this Appendix A on a quarterly basis in accordance with the schedule outlined in the expired Permit. Prior to collecting the samples the well shall be pumped sufficiently to withdraw at least three well volumes and the pH, temperature, and conductivity of the discharge are stabilized. The samples shall be analyzed for chloride, sulfate, alkalinity, fluoride, calcium, magnesium, sodium, iron, and potassium content, and a mass balance shall be performed on the results. A report of the results shall be submitted quarterly to TRO by the tenth day of the month following each quarter.
10. Bayshore shall furnish to DEQ, within 30 days of DEQ's request, unless another response date is provided by DEQ, any information which DEQ may request to process Bayshore's ground water withdrawal permit application, or to determine compliance with this Order.
11. Mail all submittals and reports required by this Appendix A to:

Mr. Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
ATTN: Enforcement
5636 Southern Boulevard
Virginia Beach, VA 23462