COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Doug Domenech
Secretary of Natural Resources

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Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Branscome, Inc.
FOR
Oak Hall Ready-Mix Facility
General Permit Registration No. VAG110265

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Branscome, Inc., regarding the ready-mix concrete Facility at Oak Hall, Virginia, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and/or regulation.

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 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.

2. "Branscome" means Branscome, Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. Branscome is a "person" within the meaning of Va. Code § 62.1-44.3

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, as described in Va. Code § 10.1-1185.

5. "Facility" means the Branscome Facility located at 30100 Withams Road, Oak Hall, Accomack County, Virginia, where Branscome manufactures ready-mix concrete.

6. "Freeboard" means the distance between the waterline and the top of the structure that contains the water.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

9. "Permit" means the General VPDES Permit No. VAG11 for Concrete Products Facilities, which was issued under the State Water Control Law and the Regulation effective October 1, 2008, and which expires on September 30, 2013. Branscome registered for and received coverage under the Permit to discharge process wastewater, noncontact cooling water, and contaminated storm water from the Facility as documented by Registration Number VAG110265.

10. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 9 VAC 25-31-10.

11. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

12. "Registration statement" means a registration statement for concrete product facilities under 9 VAC 25-193-60.

13. "Regulation" means the General VPDES Permit for Concrete Product Facilities, 9 VAC 25-193 -10 *et seq.*

14. "State Water Control Law" means Chapter 3.1 (§§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

16. "SWP3" means a storm water pollution prevention plan.

17. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

18. "Va. Code" means the Code of Virginia (1950), as amended.

19. "VAC" means the Virginia Administrative Code.

20. "VPDES" means Virginia Pollutant Discharge Elimination System.

21. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Branscome owns and operates the Facility in Accomack County, Virginia. The Permit authorizes Branscome to discharge process waste water commingled with non-contact cooling water and storm water associated with industrial activity through Outfall 001 under the conditions outlined in the Permit. Among other things, the Permit requires Branscome to monitor the discharges from Outfall 001 for flow, pH, total suspended solids ("TSS") and total petroleum hydrocarbons ("TPH") and report the results to DEQ on Discharge Monitoring Reports ("DMRs") monthly (flow, pH and TSS) and quarterly (TPH). The Permit also establishes a discharge limit for pH from Outfall 001 of 6.0 to 9.0 Standard Units ("SU"). Outfall 001 discharges to an unnamed tributary of Tunnels Mill Branch.

2. Part I.B.10 of the Permit, among other things, requires Branscome to maintain a minimum freeboard of one foot in all basins and lagoons at all times, except during a 72-hour transition period after a measurable rain event; to notify DEQ immediately whenever the one-foot freeboard is not being maintained; to conduct daily inspections of freeboard levels while the Facility is in operation; to maintain a log of the daily freeboard inspections; and to keep the freeboard-inspection log on site at the Facility.

3. Part II.D of the Permit requires Branscome to perform and document visual examinations of the quality of storm water discharges once each calendar quarter.

4. Branscome is required to develop and implement a Facility SWP3 according to requirements outlined in Part II.G of the Permit.

5. Part II.G.4(c)(1) of the Permit requires that the Facility SWP3 provide for the sweeping a minimum of once a week of those areas of the Facility exposed to storm water where cement, aggregate and settled dust accumulate.

6. DEQ staff had conducted routine compliance inspections of the Facility on April 9, 2009, and June 4, 2009, and noted deficiencies, which included, among other things, failing to conduct quarterly visual examinations of storm water quality, to properly maintain the daily freeboard inspection log, to notify DEQ when the one-foot freeboard level was not maintained, and to weekly sweep the Facility entrance to keep it clear of cement fines and other sediment. These deficiencies were noted in Warning Letters dated April 28, 2009, and July 27, 2009. Branscome's response to those Warning Letters stated that, among other things, it would instruct its personnel to be more attentive to properly monitoring and recording freeboard in the settling basins and holding pond, to performing routine Facility inspections, and to maintaining the entrance to the Facility free of sediment. Branscome also received Warning Letters dated December 7, 2009, and March 9, 2010, for untimely submittal of monthly DMRs.

7. During a DEQ Facility inspection on March 2, 2010, and a subsequent review of DEQ files, DEQ staff documented the following Permit compliance deficiencies:

    a. The daily freeboard inspection logs for the period September 2009 through February 2010 required by Part I.B.10 of the Permit indicated several days during which the Facility was in operation when freeboard was not recorded in the freeboard inspection log. There were also several entries in the log reflecting freeboard less than the Permit-required one foot that had not been reported to DEQ.

    b. The quarterly visual examination of storm water quality required by Part II.D of the Permit had not been performed during the 4th Quarter of calendar year 2009.

    c. The Facility SWP3 did not provide for weekly sweeping of the Facility entrance as required by Part II.G.4(c)(1) of the Permit despite the presence of concrete fines and other sediment.

    d. Accumulated storm water was being discharged to state waters from a location on the Facility (rail-siding loading pit) not identified in the Permit as an outfall. The storm water in the loading pit was determined to have elevated pH (9.4 to 9.6 SU). Part III.F of the Permit prohibits such discharges.

    e. The unauthorized discharge of storm water from the rail-siding loading pit was not reported to DEQ within 24 hours of its occurrence as required by Part III.G of the Permit.

8. TRO issued Notice of Violation No. W2010-05-T-0002 dated May 24, 2010, for the deficiencies noted in paragraph C(7) above.

9. On June 4, 2010 TRO enforcement staff met with Branscome representatives to discuss the NOV. The Branscome representatives acknowledged that storm water had occasionally been discharged from the loading pit, but was now being pumped into the holding pond. The Branscome representatives also acknowledged the violation of the freeboard level in the holding pond and attributed it to human error. Regarding the holding pond freeboard issue, they noted that the size of the holding pond had been doubled and Outfall 001 relocated to a perimeter ditch to accommodate the pond's expansion. The Branscome representatives acknowledged missing the quarterly visual examination for the last quarter of 2009 and also attributed it to human error. They also acknowledged an error in the weekly sweeping frequency and have updated the SWP3 to require weekly sweeping. The representations made at the June 4, 2010, meeting were confirmed by Branscome in a letter to TRO dated August, 17, 2010, and by a visit by DEQ staff on August 31, 2010.

10. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances." It provides further that any person who causes such a discharge shall notify DEQ within 24 hours of its occurrence.

11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

12. The Department has issued to Branscome coverage under no permits or certificates other than General VPDES Permit No. VAG11 through Registration No. VAG110265.

13. Elevated pH (above 9.0 SU) is considered a pollutant under 9 VAC 25-31-10 because it may cause or contribute to pollution of State waters by altering the chemical properties of State waters in a manner as is likely to render such waters harmful or detrimental or injurious to the health of animals, fish, or aquatic life.

14. Tunnels Mill Branch is located in the Chesapeake Bay Basin, is a surface water located wholly within the Commonwealth, and is a "state water" under State Water Control Law. It is not listed in DEQ's 305(b) report as impaired.

15. Based on the results of the March 2, 2010 inspection, the June 4, 2010, meeting, and the documentation submitted on August 17, 2010, the Board concludes that Branscome has violated Va. Code §62.1-44.5, the Regulation, and Parts III.F and III.G of the Permit by discharging storm water from the Facility through an unpermitted outfall and by failing to report the unauthorized discharge within 24 hours of its occurrence. Additionally, the Board concludes that Branscome violated Parts I.B.10, II.D and II.G.4(c)(1) of the Permit, all as described in paragraphs C(7) through C(13), above.

16. Branscome has submitted documentation that verifies and DEQ staff inspected the Facility on August 31, 2010, and verified that the violations as described in paragraphs C(7)(c) and C(7)(d), above, have been corrected.

17. In order for Branscome to return to compliance, DEQ staff and representatives of Branscome have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Branscome, and Branscome agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $5,670 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," and delivered to:

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

Branscome shall include its Federal Employer Identification Number (FEIN) (54-2017905) 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 Branscome for good cause shown by Branscome, 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, Branscome admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Branscome 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. Branscome declares it has received fair and due process under the Administrative Process Act 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 modify, rewrite, amend, or enforce this Order.

6. Failure by Branscome 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. Branscome 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. Branscome shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Branscome 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 Branscome 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 Branscome.

11. This Order shall continue in effect until:

    a. Branscome 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

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Branscome.

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

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, Branscome voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 10th day of December, 2010.

Francis L. Daniel, Regional Director
Department of Environmental Quality

Branscome Inc., voluntarily agrees to the issuance of this Order.

Date: 10-4-10 By: _____, Vice President
(Person) (Title)
Branscome Inc.

Commonwealth of Virginia
City/County of James City

The foregoing document was signed and acknowledged before me this 4th day of October, 2010, by Kevin R. Jones who is Vice President of Branscome Inc., on behalf of the corporation.

Julian H. Lipscomb, Jr.
Notary Public

247127
Registration No.

My commission expires: August 31, 2013

Notary seal:

JULIAN H. LIPSCOMB, JR.
Notary Public
Commonwealth of Virginia
247127
My Commission Expires Aug 31, 2013

APPENDIX A
SCHEDULE OF COMPLIANCE

Branscome shall:

1. By March 1, 2011, submit to DEQ Tidewater Regional Office for review and approval, a corrective action plan ("plan") and schedule that includes, at a minimum, the following components:

   - Construction of a stable, permanent containment structure around the expanded holding pond.
   - Construction of a permanent, discrete location for Outfall 001.
   - Measures and practices that will be incorporated into the Facility SWP3 for the proper management of storm water that accumulates in the rail-siding loading pit.
   - Completion of all construction by July 1, 2011.
   - Final inspection by DEQ.

2. By April 10, 2011, July 10, 2011, October 10, 2011, and January 10, 2012, submit to DEQ Tidewater Regional Office, reports of all Facility inspections and visual examinations of storm water quality conducted by or on behalf of Branscome to ensure compliance with the Facility SWP3 and the Permit and copies of all freeboard logs from the preceding three-month period. Reports shall include any corrective action taken in response to deficiencies noted during any inspection or examination.

3. Within 60 days of completion of the corrective action required by Item 1 of this Appendix A, submit to DEQ Tidewater Regional Office for review and approval an updated Facility SWP3 and site map that implements the completed corrective actions and contains all elements required by Part II.G.4 of the Permit, including the proper locations of all storm water outfalls at the Facility and a description of the housekeeping measures that will be implemented to minimize the amount of concrete fines and other sediment that collect at the Facility entrance.

4. Comply with all conditions of the Permit.

5. Mail all submittals and reports required by this Appendix A to:

   Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Blvd.
   Virginia Beach, VA 23462