COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2009
www.deq.virginia.gov

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

Concrete Precast Systems, Inc. and Coastal Precast Systems, LLC

VPDES Permit No. VA0089818

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, Concrete Precast Systems, Inc. and Coastal Precast Systems, LLC, 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 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.

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 25-31-10 *et seq.* - the Virginia Pollutant Discharge Elimination System ("VPDES") Permit Regulation.

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

8. "Permit" means VPDES Permit No. VA0089818.

9. "CPS" means, collectively, Concrete Precast Systems, Inc., and Coastal Precast Systems, LLC.

10. "Facility" means the CPS facility at 1320 Yacht Drive in Chesapeake, Virginia, at which it manufactures precast/prestressed concrete noise walls and other structural and architectural products.

11. "Quarterly project summary report" (or "QPSR") as defined by Part I.B.8 of the Permit means a report that details the quarterly solids balance showing such items as inputs to and withdrawals from holding facilities and solids disposal practices, and a quarterly water balance showing inputs to and draw-downs from the holding facilities.

SECTION C: Findings of Fact and Conclusions of Law

1. CPS operates a concrete-product manufacturing facility in Chesapeake, Virginia, that is subject to the Permit, which was issued to CPS under the name Concrete Precast Systems, Inc. on August 4, 2003 and expires August 3, 2008. The Permit was modified on March 19, 2007 to reflect the change in the name of the facility to its current name Coastal Precast Systems, LLC. The Permit was renewed on August 4, 2008 and expires August 3, 2013.

2. At all times relevant to this Order, Part I.A.1 of the Permit authorized CPS to discharge storm water and treated industrial waste water from its one permitted internal outfall (Outfall 101) and three external outfalls (Outfalls 001, 002 and 003) under conditions outlined in the Permit. Among other things, the Permit required CPS to monitor the discharges from Outfalls 101, 001 and 002 and report the results to DEQ on Discharge Monitoring Reports ("DMRs") monthly (Outfall 101), quarterly (Outfall 001) and semiannually (Outfall 002) by the tenth day of the month following the respective reporting period.

3. Part I.A.1 of the Permit also required CPS to monitor the discharges from Outfalls 001 and 002 for flow, pH, total suspended solids ("TSS"), total petroleum hydrocarbons, and chemical oxygen demand, and report to DEQ any exceedances thereof.

4. CPS (under the name Concrete Precast Systems, Inc.) was the subject of a Special Order by Consent with the State Water Control Board effective June 20, 2003 ("2003 Order"), which addressed, among other things, exceeding permit limits for pH and TSS at Outfall 001, unpermitted discharges, failing to maintain the permit-required freeboard on one of its storm water management lagoons, untimely submittal of its revised storm water pollution prevention plan ("SWP3") and permit reissuance application, and failures to respond to information requests regarding operations and discharges. Among other things, the 2003 Order required CPS to: submit to DEQ a revised Operations & Maintenance ("O & M") Manual and SWP3 to reflect current operations; install, operate and maintain storm water best management practices; and operate and maintain the storm water management lagoon in accordance with the Permit and the O & M Manual.

5. The DMR submitted for Outfall 001 for the 2nd Quarter 2006 reported a TSS concentration of 61 mg/l; the Permit limit is 60 mg/l. No letter of explanation was provided.

6. For the 4th Quarter 2006, CPS submitted a "no discharge" DMR for Outfall 001. During a routine compliance inspection on November 15, 2006, however, DEQ compliance staff had observed a discharge from Outfall 001.

7. CPS violated Permit condition Part I.A.1 as noted in paragraphs C.5 and C.6 of this Order. CPS was advised of these Permit non-compliance issues in Notice of Violation ("NOV") #W2007-02-T-0004 dated March 5, 2007.

8. CPS responded to the March 5, 2007 NOV by letter dated September 26, 2007 acknowledging that discharges from Outfall 001 had occurred during the 4th Quarter 2006 and that samples of the discharges had been analyzed for pH, but that the CPS employee responsible for preparing DMRs had not been so notified. The response did not address the TSS exceedance for the 2nd Quarter 2006.

9. During a routine facility inspection on November 2, 2007 and subsequent record review DEQ staff documented the following compliance deficiencies with respect to the monitoring requirements of Part I.A.1 of the Permit:

   a. CPS submitted monthly "no discharge" DMRs for Outfall 101 for the eight-month period October 2006 through May 2007. The facility log that records pH values for discharges from Outfall 101, however, indicated that discharges had occurred during each of those eight months.

   b. The DMR for Outfall 001 for the 3rd Quarter 2007 and the DMR for Outfall 101 for September 2007, both of which were due October 10, 2007, were not received by DEQ until November 5, 2007.

   c. CPS submitted a "no discharge" DMR for Outfall 001 for the 4th Quarter 2007. During the routine compliance inspection on November 2, 2007, however, DEQ compliance staff had observed a discharge from Outfall 001.

   d. The DMR for Outfall 002 for the second semiannual period (July to December) 2007 reported a pH level of 11 Standard Units ("SU"), which exceeded the maximum limit prescribed by the Permit of 9 SU.

10. During the routine facility inspection on November 2, 2007 and subsequent record review DEQ staff documented the following Permit compliance deficiencies with respect to general Permit conditions:

    a. The O&M Manual had not been updated to reflect the facility's current name, the identity of the entity currently responsible for performing facility inspections, or industrial activities that had changed since the document was originally prepared as required by Part I.B.2 of the Permit.

    b. Products, materials, industrial wastes and/or other wastes were not being handled and stored in such a manner so as not to permit a discharge of such product, materials, industrial wastes and/or other wastes to State waters as required by Part I.B.6 of the Permit.

11. CPS is required to manage storm water at the facility according to requirements outlined in Part I.C of the Permit and, specifically, to develop and implement a facility SWP3 according to requirements outlined in Part I.C.3 of the Permit.

12. During the routine facility inspection on November 2, 2007 and subsequent record review DEQ staff documented the following Permit compliance deficiencies with respect to storm water management conditions:

    a. Storm event data had not been recorded in monthly discharge logs or submitted with DMRs as required by Part I.C.2.b of the Permit since 2005.

    b. Quarterly visual monitoring of storm water discharges as required by Part I.C.2.e of the Permit had not been conducted since 2005.

    c. The SWP3 had not been updated to reflect the facility's current name, the identity of the entity currently responsible for performing facility inspections, or industrial activities that had changed since the document was originally prepared as required by Part I.C.3.c of the Permit.

    d. The facility was not maintained in a clean and orderly manner in order to prevent the contribution of pollutants to storm water as required by Part I.C.3.d.(3)(a) of the Permit and section 4.1 of the SWP3.

    e. Preventative maintenance had not been properly performed on Outfall 001 as required by Part I.C.3.d.(3)(b) of the Permit as Outfall 001 had become overgrown with vegetation and the berm surrounding the storm water management lagoon controlled by Outfall 001 had become eroded.

    f. The routine quarterly facility inspection had not been performed for the 2nd Quarter 2007 and the reports of other routine inspections did not document action taken to correct deficiencies noted during the inspections as required by Part I.C.3.d.(3)(d) of the Permit and section 4.4 of the SWP3.

    g. The comprehensive site compliance evaluation ("CSCE") required by Part I.C.3.d.(4) of the Permit and section 4.9 of the SWP3 had not been performed in 2005 and 2006.

13. CPS violated Permit conditions Part I.A.1, Part I.B.2, Part I.B.6, Part I.C.2.b, Part I.C.2.e, Part I.C.3.c, Part I.C.3.d(3)(a), (b) and (d), and Part I.C.3.d(4) as noted in paragraphs C.9, C.10 and C.12 of this Order.

14. On February 6, 2008 DEQ issued NOV W2007-12-T-0001 to CPS. The NOV advised CPS of the violations of Permit conditions Part I.A.1, Part I.B.2, Part I.B.6, Part I.C.2.b, Part I.C.2.e, Part I.C.3.c, Part I.C.3.d.(3)(a), (b) and (d), and Part I.C.3.d.(4), and the conditions in sections 4.1, 4.4 and 4.9 of the facility SWP3 revealed during the inspection conducted by DEQ staff on November 2, 2007.

15. CPS responded to the NOV by letter dated February 18, 2008 in which it asserted the following: the DMRs for the 3rd Quarter 2007 had been mailed on October 8, 2007 (not received by DEQ until November 5, 2007); the high pH level reported on the July-December 2007 DMR for Outfall 002 was likely due to lack of rainfall causing an unusually high concentration of concrete fines in storm water runoff; some housekeeping deficiencies had been corrected; quarterly visual inspections of storm water quality would resume in 2008; storm event data, which CPS had been keeping on file, would now be submitted with the DMRs; the O&M Manual and SWP3 had been revised to reflect the

facility's new name; reports of routine quarterly facility inspections would now reflect corrective action taken; the erosion pattern at Outfall 001 would be remedied within 60 days; and the CSCE had been completed. CPS stated further that the "discharge" from Outfall 001 witnessed by the DEQ inspector was a "very small drip" to prevent the discharge pipe from clogging; the valve has since been shut and locked closed. Finally, CPS asserted that no discharges from Outfall 101 had occurred; the water had been used for dust suppression at the facility.

16. In the documentation supporting its application to renew the Permit, CPS submitted an updated O&M Manual and SWP3 and stated that it would no longer be discharging from Outfall 101. Outfall 101 has been omitted from the Permit renewal.

17. DEQ compliance and enforcement staff ("staff") conducted a site visit on June 23, 2008 and noted substantial improvement in overall cleanliness and housekeeping practices. A significant number of the housekeeping and materials-management deficiencies noted during the November 2, 2007 compliance inspection had been remedied. CPS representatives stated that process waste water formerly discharged from Outfall 101 was now being returned to the concrete-production process for reuse. A sprinkler system had been installed at the facility that uses well water (rather than process waste water) for dust suppression.

18. Part I.B.8 of the Permit requires CPS to submit a QPSR by the tenth day of the month following each quarter. CPS violated Permit condition Part I.B.8 by failing to submit the QPSR for the 4th Quarter 2007 by the date required by the Permit (January 10, 2008). CPS was so notified by NOV #W2008-04-T-0004 dated May 5, 2008. CPS responded by letter dated May 12, 2008 that enclosed a copy of the 4th Quarter 2007 QPSR, which CPS asserted it had submitted to DEQ on January 9, 2008 with its DMRs. The original QPSR was not found in DEQ's files.

19. The DMR submitted for Outfall 001 for the 2nd Quarter 2008 reported a TSS concentration of 150 mg/l; the Permit limit is 60 mg/l. The DMR for Outfall 002 for the first semiannual period (January to June) 2008 reported a pH level of 9.9 SU, which exceeded the maximum limit prescribed by the Permit of 9 SU. No letter of explanation was provided for either permit-limit exceedance. CPS violated Permit condition Part I.A.1 and was advised of these Permit non-compliance issues in NOV #W2008-08-T-0002 dated August 25, 2008.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted it by Va. Code § 62.1-44.15(8a) and (8d), orders CPS, and CPS agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders CPS, and CPS voluntarily agrees to pay a civil charge of $23,835 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include CPS'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 1104
Richmond, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of CPS, for good cause shown by CPS, 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 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, CPS admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. CPS 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. CPS 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 CPS 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. CPS 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. CPS shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CPS 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 24 hours of learning of any condition above, which CPS 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 CPS. Notwithstanding the foregoing, CPS agrees to be bound by any compliance date that 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 CPS. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CPS from its obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. This Order hereby supersedes and cancels the 2003 Order referenced in paragraph C.4 above.

13. By its signature below, CPS voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5th day of December, 2008.

Francis L. Daniel

Francis L. Daniel

Concrete Precast Systems, Inc., voluntarily agrees to the issuance of this Order.

By: _____

Date: 9-2-2008

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 2nd day of September, 2008, by Paul F. Ogorchock (*name*), who is President/Owner (*title*) of Concrete Precast Systems, Inc. on behalf of the corporation.

Jacqueline J Campbell
Notary Public

My commission expires: 11/30/2011

Coastal Precast Systems, LLC, voluntarily agrees to the issuance of this Order.

By: _____

Date: 9-2-2008

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 2nd day of September, 2008, by Paul F. Ogorchock (*name*), who is President/Owner (*title*) of Coastal Precast Systems, LLC, on behalf of the corporation.

Jacqueline J Campbell
Notary Public

My commission expires: 11/30/2011.

APPENDIX A

CPS shall:

1. Within 30 days of the effective date of this Order submit to DEQ Tidewater Regional Office, certification that all housekeeping and materials-management deficiencies noted during the November 2, 2007 compliance inspection have been corrected.

2. Within 30 days of the effective date of this Order submit to DEQ Tidewater Regional Office, the reports of all facility inspections, required by the Permit or SWP3, conducted since November 2, 2007 by or on behalf of CPS to ensure compliance with the SWP3 and the Permit.

3. Notwithstanding Part I.C.3.d.(3)(d) of the Permit, for one year following the effective date of this Order inspect the facility monthly for compliance with the SWP3 and the Permit and submit to DEQ Tidewater Regional Office copies of the records of inspections along with a report of the corrective action taken in response to each inspection. Records of inspections are due on the tenth day of the month following the month in which the inspections are conducted.

4. Within 90 days of the effective date of this Order submit to DEQ Tidewater Regional Office for its review and approval, a corrective action plan ("plan") and schedule to properly manage storm water at the facility. The plan and schedule shall include, at a minimum, improving overall cleanliness of the Yacht Drive corridor, protecting the northern storm water management lagoon (associated with Outfall 001) from contamination from storm water runoff, maintaining the physical integrity of the northern storm water management lagoon and the surrounding berm, and managing process waste water that accumulates in the batch plant sedimentation ponds to ensure contaminated waste water does not come into contact with storm water. Upon its approval, the plan shall become a part of and enforceable under the terms of this Order.

5. Within 60 days of completion of the DEQ-approved corrective action resulting from the plan prescribed by Item 4 of this Appendix A submit to DEQ Tidewater Regional Office for its review and approval a revised SWP3 that contains all elements required by Part I.C.3.d of the Permit and that incorporates any structural and nonstructural storm water management controls that result from the completed corrective action.

6. Comply with all conditions of the Permit, except as noted in Item 3 of this Appendix A.

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

   Mr. Francis L. Daniel, Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Blvd.
   Virginia Beach, VA 23462