# COMMONWEALTH of VIRGINIA

*DEPARTMENT OF ENVIRONMENTAL QUALITY*
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director


# STATE WATER CONTROL BOARD
# ENFORCEMENT ACTION - ORDER BY CONSENT
# ISSUED TO
# S.B. COX READY MIX, INC.
# Permit No. VAG11
# FOR THE
# DOSWELL FACILITY - VPDES Registration No. VAG110262
# GOOCHLAND FACILITY - VPDES Registration No. VAG110215
# PORTUGEE ROAD FACILITY - VPDES Registration No. VAG110104
# POWHATAN FACILITY - VPDES Registration No. VAG110214

## 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 S.B. Cox Ready Mix, Inc., regarding the Doswell, Goochland, Portugee Road, and Powhatan facilities, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation. This Order supersedes and terminates the Consent Order issued by the Board to S.B. Cox Ready Mix, Inc., on June 29, 2005.

## SECTION B: Definitions

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

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

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. "CSCE" means comprehensive site compliance evaluation.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.

7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:

    a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

    b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

8. "DMR" means Discharge Monitoring Report.

9. "Doswell Facility" or "Doswell Plant" means the SB Cox facility at 16456 Washington Highway, Doswell, Virginia, from which discharges of process waste water and stormwater associated with industrial activity occur. SB Cox applied for registration of the Doswell Facility under the Permit on August 1, 2008 and was issued Registration No. VAG110262 on October 1, 2008.

10. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

11. "Facilities" or "Plants" means the Doswell, Goochland, Portugee Road, and Powhatan Facilities or Plants.

12. "Goochland Facility" or "Goochland Plant" means the SB Cox facility at 12554 West Broad Street, Short Pump, Virginia, from which discharges of process waste water and stormwater associated with industrial activity occur. SB Cox applied for registration of the Goochland Facility under the Permit on August 1, 2008 and was issued Registration No. VAG110215 on October 1, 2008.

13. "SB Cox" means S.B. Cox Ready Mix, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. SB Cox is a "person" within the meaning of Va. Code § 62.1-44.3.

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

15. "O&M" means operations and maintenance.

16. "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.

17. "Permit" means General VPDES Permit No. VAG11 for the discharge of process waste water and storm water associated with industrial activity from concrete products facilities, which was issued under the State Water Control Law and the Regulation on October 1, 2008 and which expires on September 30, 2013.

18. "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.

19. "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.

20. "Portugee Road Facility" or "Portugee Road Plant" means the SB Cox facility at 1601 Portugee Road, Sandston, Virginia, from which discharges of process waste water and stormwater associated with industrial activity occur. SB Cox applied for registration of the Portugee Road Facility under the Permit on August 1, 2008 and was issued Registration No. VAG110104 on October 1, 2008.

21. "Powhatan Facility" or "Powhatan Plant" means the SB Cox facility at 1920 Anderson Highway, Powhatan, Virginia, from which discharges of process waste water and stormwater associated with industrial activity occur. SB Cox applied for registration of the Powhatan Facility under the Permit on August 1, 2008 and was issued Registration No. VAG110214 on October 1, 2008.

22. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

23. "Registration statement" means a registration statement for coverage under the concrete products facilities general permit.

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

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

26. "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.

27. "SWP3" means Stormwater Pollution Prevention Plan.

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

29. "VAC" means the Virginia Administrative Code.

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

31. "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. SB Cox owns and operates several ready mix concrete plants in Virginia as follows: 1) the Doswell Plant located at 16456 Washington Highway in Doswell, Virginia; 2) the Goochland Plant located at 12554 West Broad Street in Goochland County, Virginia; 3) the Portugee Road Plant located at 1601 Portugee Road in Sandston, Virginia; and, 4) the Powhatan Plant located at 1920 Anderson Highway in Powhatan, Virginia. All of the Plants discharge process waste water and stormwater associated with industrial activity.

2. The Permit allows SB Cox to discharge uncontaminated and treated process wastewater and stormwater from the Doswell Plant, to an unnamed tributary of the North Anna River, from the Goochland Plant to an unnamed tributary of Little Tuckahoe Creek, from the Portugee Road Plant to White Oak Swamp Creek and from the Powhatan Plant to an unnamed tributary of Dutoy Creek, in strict compliance with the terms and conditions of the Permit.

3. The unnamed tributary of the North Anna River is located in the York River Basin. During the 2010 305(b)/303(d) Water Quality Assessment, the stream was not assessed

(Category 3A water). The Doswell Facility was addressed in the Chesapeake Bay Total Maximum Daily Load (TMDL), which was approved by the EPA on December 29, 2010. The discharge was included in the aggregated wasteload allocations of total nitrogen, total phosphorus, and total suspended solids for non-significant wastewater dischargers in the Pamunkey River tidal freshwater segment (PMKTF). The stream is not proposed for designation as a Tier 3 water.

4. The unnamed tributary of Little Tuckahoe Creek is located in the James River Basin (Middle James). During the 2010 305(b)/303(d) Water Quality Assessment, the stream was not assessed (Category 3A water). The Goochland Facility was not addressed in either the Tuckahoe Creek Watershed TMDL or the James River and Tributaries-City of Richmond Bacterial TMDL, which were approved by the EPA on September 20, 2004 and November 4, 2010, respectively. The Goochland Facility was addressed in the Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010. The discharge was included in the aggregated wasteload allocations of total nitrogen, total phosphorus, and total suspended solids for non-significant wastewater dischargers in the upper James River tidal freshwater segment (JMSTF2). The stream is not proposed for designation as a Tier 3 water.

5. The unnamed tributary of White Oak Swamp Creek is located in the James River Basin (Middle James). During the 2010 305(b)/303(d) Water Quality Assessment, the stream was assessed as fully supporting with observed effects for the Fish Consumption Use (Category 2B water) due to a Virginia Department of Health fish consumption advisory for kepone. The other designated uses were not assessed. The Portugee Road Facility was included in the White Oak Swamp Bacterial TMDL which was approved by the EPA on September 20, 2004 and by the SWCB on July 31, 2008; SB Cox received a wasteload allocation of zero *E. coli*/year. The Portugee Road Facility was also addressed in the Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010. The discharge was included in the aggregated wasteload allocations of total nitrogen, total phosphorus, and total suspended solids for non-significant wastewater dischargers in the upper James River tidal freshwater segment (JMSTF2). The stream is not proposed for designation as a Tier 3 water.

6. The unnamed tributary of Dutoy Creek is located in the James River Basin (Middle James). During the 2010 305(b)/303(d) Water Quality Assessment, the stream was not assessed (Category 3A water). The Powhatan Facility was not addressed in the James River and Tributaries-City of Richmond Bacterial TMDL, which was approved by the EPA on November 4, 2010. The Powhatan Facility was addressed in the Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010. The discharge was included in the aggregated wasteload allocations of total nitrogen, total phosphorus, and total suspended solids for non-significant wastewater dischargers in the upper James River tidal freshwater segment (JMSTF2). The stream is not proposed for designation as a Tier 3 water.

7. Part II.G of the Permit requires SB Cox to develop a SWP3 for the Doswell Plant according to requirements outlined in Part III. Part II.G.2.b of the Permit requires SB Cox employees to keep the SWP3 at the Doswell Plant.

8. Part I.A.6 and Part II.D of the Permit requires Doswell Plant employees to perform quarterly visual examinations of the quality of the storm water discharging from the Doswell Plant outfalls. Part II.G.4.c.(4) of the Permit requires visual examination reports to be kept at the Doswell Plant.

9. Part I.B.5 of the Permit requires that waste concrete be managed within a designated area at the Doswell Plant.

10. Part I.A. of the Permit requires SB Cox to monitor each of the Plants once a year for flow, total petroleum hydrocarbons, total suspended solids, total iron, and pH.

11. During a DEQ file review and Doswell Facility inspection on November 10, 2010, DEQ Staff documented the following compliance deficiencies.
    a. A SWP3 was not at the Doswell Facility for inspection.
    b. No records could be provided indicating that quarterly visual monitoring of storm water discharges were being performed as required by Part I.A.6 of the Permit.
    c. Waste concrete had migrated out of the designated storage area at the Plant.
    d. SB Cox had failed to submit annual DMRs for the Doswell Plant. It was also discovered that annual DMRs had not been submitted for the Goochland Plant, Portugee Road Plant and the Powhatan Plant.

12. On March 15, 2011, PRO issued a NOV No. W2011-03-P-0002 for the compliance deficiencies observed during November 10, 2010 inspection. This included failure to provide a SWP3, failure to provide records of quarterly visual inspections, failure to contain waste concrete in the designated area, and failure to submit annual DMRs. The NOV also cited the failure to submit annual DMRs from the Goochland Plant, the Portugee Road Plant, and the Powhatan Plant.

13. SB Cox responded to the Notice of Violation stating that an engineering firm has been hired to develop a SWP3 for all the SB Cox Plants. SB Cox staff stated they were unaware of the inspection and sampling requirements in the Permit and thought the only thing the Department required was daily freeboard measurements, which they have been submitting to the Department. SB Cox staff agreed to conduct the required inspections and sampling as required.

14. Part II.G of the Permit requires SB Cox to develop a SWP3 for the Portugee Road Plant according to requirements outlined in Part III. Part II.G.2.b of the Permit requires SB Cox employees to keep the SWP3 at the Portugee Road Plant.

15. Part I.A.6 & Part II.D of the Permit requires Portugee Road Plant employees to perform quarterly visual examinations of the quality of the storm water discharging from the

Portugee Road Plant outfalls. Part II.G.4.c.(4) of the Permit requires visual examination reports to be kept at the Portugee Road Plant.

16. Part I.A. of the Permit requires SB Cox to monitor each of the Plants once a year for flow, total petroleum hydrocarbons, total suspended solids, total iron, and pH.

17. During a DEQ file review and Portugee Road Plant inspection on April 7, 2011, DEQ Staff documented the following compliance deficiencies.
    a. A SWP3 was not available at the Portugee Road Plant for inspection. SB Cox staff stated that a SWP3 had not been developed for any of the Plants.
    b. No records could be provided indicating that quarterly visual monitoring of storm water discharges were being performed as required by Part I.A.6 of the Permit.
    c. SB Cox had failed to submit annual DMRs for the Portugee Road Plant. SB Cox staff stated they had not conducted the annual samples and were unaware of the annual DMR submittal requirement.

18. On April 7, 2011, Department staff met with SB Cox staff to discuss the violations.

19. On October 18, 2011, SB Cox submitted a copy of a SWP3 for each facility.

20. 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."

21. The Regulation, at 9 VAC 25-193-50, states that discharges are authorized under the Permit only when permit conditions are met. The Permit, at 9 VAC 25-193-70, Part III.F, states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.

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

23. The Department has issued coverage under no permits or certificates to SB Cox that allows a discharge to State Waters from the Plants other than VPDES Permit VAG11.

24. The unnamed tributaries of White Oak Swamp Creek, the North Anna River, Little Tuckahoe Creek, and Dutoy Creek are surface waters located wholly within the Commonwealth and are "state water(s)" under State Water Control Law.

25. Based on the results of November 10, 2010 and April 7, 2011 inspections, the April 7, 2011 meeting, and the documentation contained in the SB Cox files, the Board concludes that SB Cox has violated the Permit and Va. Code 62.1-44.5 and 9 VAC 25-193-50 at the Doswell Plant, the Goochland Plant, the Portugee Road Plant, and the Powhatan Plant by discharging stormwater associated with industrial activity from the Plants while concurrently failing to comply with the conditions of the Permit, as described in Section C above.

26. In order for SB Cox to return to compliance, DEQ staff and representatives of SB Cox have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order. SB Cox and DEQ agree that once issued, this Order will

## SECTION D: Agreement and Order

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

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

2. Pay a civil charge of $12, 739 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

| Due Date | Amount |
|---|---|
| January 15, 2012 | $3,185 or balance |
| April 15, 2012 | $3,185 or balance |
| July 15, 2012 | $3,185 or balance |
| October 15, 2012 | $3,185 |

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order and the Department may demand in writing full payment by SB Cox. Within 15 days of receipt of such letter, SB Cox shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

4. 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

SB Cox shall include its Federal Employer Identification Number (FEIN) 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).

Both the Board and the SB Cox understand and agree that this Order supersedes and terminates the Consent Order issued by the Board to SB Cox on June 29, 2005.

## SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of SB Cox for good cause shown by SB Cox, 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 NOV No. W2011-03-P-0002 and 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, SB Cox admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.

4. SB Cox 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. SB Cox 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 SB Cox 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. SB Cox 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. SB Cox shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. SB Cox 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 the parties intend 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, and any 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 SB Cox. Nevertheless, SB Cox agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after SB Cox has completed all of the requirements of the Order;

    b. SB Cox 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

    c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to SB Cox.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve SB Cox 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 SB Cox 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 SB Cox certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind SB Cox to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of SB Cox.

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, SB Cox voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15th day of DECEMBER, 2011.

Michael P. Murphy, Regional Director
Department of Environmental Quality

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S.B. Cox Ready Mix, Inc., voluntarily agrees to the issuance of this Order.

Date: 10/19/2011 By: MS Nelson, President
(Person) (Title)
S.B. Cox Ready Mix, Inc.

Commonwealth of Virginia
City/County of GOOCHLAND

The foregoing document was signed and acknowledged before me this 19th day of OCTOBER, 2011, by MORGAN S. NELSON who is PRESIDENT of S.B. Cox Ready Mix, Inc., on behalf of the corporation.

Notary Public

7506432
Registration No.

My commission expires: 7-31-2015

Notary seal:

Kelli Grogan Mills
Commonwealth of Virginia
Notary Public
Commission No. 7506432
My Commission Expires 7/31/2015

# APPENDIX A
# SCHEDULE OF COMPLIANCE

1. Stormwater Pollution Prevention Plan (SWP3)

   a. SB Cox shall respond to Department comments on the SWP3 as soon as possible, but in no event later than fifteen days after receiving any DEQ correspondence regarding the contents of the SWP3. The SWP3 must be developed in accordance with 9 VAC 25-193-70, Part II.G.

   b. SB Cox shall as soon as possible, but in no event later than January 1, 2012, submit to the Department documentation showing that employees at all of the Facilities have received training in the SWP3 in accordance with 9 VAC 25-193-70 Part II. G.4.c.(5).

2. Waste Concrete

   SB Cox shall as soon as possible, but in no event later than November 30, 2011, move waste concrete back within the boundaries of the designated waste concrete area at the Doswell Facility in accordance with 9 VAC 25-193-70, Part I. B.(5). By November 30, 2011, SB Cox shall submit to the Department photographic documentation the waste was moved.

3. Records and reporting

   SB Cox shall develop as soon as possible, but in no event later than November 30, 2011, a formal written procedure for each of the Facilities describing the recordkeeping and reporting requirements of the Permit. The procedure must be submitted to the Department by November 30, 2011 for approval and must reflect all the records and reports required by 9 VAC 25-193-70. SB Cox staff responsible for records and reports must be trained in the procedure and the training must documented as part of Appendix requirement No. 2, above.

4. DEQ Contact

   Unless otherwise specified in this Order, SB Cox shall submit all requirements of Appendix A of this Order to:

   **Frank Lupini**
   **Enforcement Specialist**
   **VA DEQ –Piedmont Regional Office**
   **4949A Cox Road**
   **Glen Allen, Virginia 23060**
   **Frank.Lupini@deq.virginia.gov**