



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN VIRGINIA REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Jeffery A. Steers
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO SMITH-MIDLAND, INC FOR SMITH-MIDLAND SEWAGE TREATMENT PLANT

(VPDES PERMIT NO. VA0084298)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§62.1-44.15(8a) and (8d), and 10.1-1185 between the State Water Control Board and Smith-Midland, Inc. regarding the Smith-Midland Sewage Treatment Plant, for the purpose of resolving certain violations of the State Water Control law and 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 §62.1-44.7 and 10.1-1184.
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. "Smith-Midland" means Smith-Midland, Inc.

7. "STP" means the Smith-Midland Sewage Treatment Plant located in Fauquier County, Virginia.
8. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
9. "Permit" means Virginia Pollutant Discharge Elimination Permit System (VPDES) Permit No. VA0084298, which was reissued April 6, 2006 and expires April 5, 2011.
10. "BOD₅" means Biochemical Oxygen Demand.
11. "TSS" means Total Suspended Solids.
12. "NOV" means Notice of Violation.
13. "WL" means Warning Letter.

SECTION C: Findings of Fact and Conclusions of Law

1. Smith-Midland, Inc. owns and operates the Smith-Midland STP in Fauquier County, Virginia. The STP serves the facility which manufactures pre-cast concrete products. This facility is the subject of VPDES Permit No. VA0084298, which authorizes Smith-Midland to discharge to Licking Run Stream via two Outfalls. Wastewater that is generated from domestic operations at Smith-Midland is discharged via Outfall 001 to Licking Run Stream. Effluent created from Smith-Midland's concrete acid washing process is discharged via Outfall 002 to Licking Run Stream.
2. Smith-Midland has experienced permit effluent violations for BOD, TSS, pH, and fecal coliform. DEQ sent Smith-Midland, Inc. the following NOV's and WL's:
 - NOV No. W2007-02-N-0010 citing Permit limit violations for exceeding the weekly concentration average maximum limit and monthly concentration average limit for BOD₅, and the weekly concentration average maximum limit and the monthly concentration average limit for TSS during a sampling inspection performed on January 17, 2007 at Outfall 001.
 - WL No. W2007-02-N-1012, citing Permit limit violations for exceeding the weekly concentration average maximum limit and monthly concentration average limit for BOD₅ during a sampling inspection performed on December 28, 2006 at Outfall 001 and for violating the minimum pH limit for Outfall 002 as reported on the December Discharge Monitoring Report ("DMR").

- WL No. W2006-12-N-1012, citing Permit limit violations for exceeding the weekly concentration average maximum limit and monthly concentration average limit for BOD₅ had been exceeded, and the weekly concentration average maximum limit and monthly concentration average limit for TSS was exceeded during a sampling inspection performed on November 21, 2006 at Outfall 001.
 - The Sampling inspection done by DEQ on September 21, 2006, showed that the weekly concentration average maximum limit for TSS was exceeded. No warning letter was sent for this exceedance.
 - WL No. W2006-09-N-1016 citing Permit limit violations for exceeding monthly concentration average limit for fecal coliform for Outfall 001 and the minimum pH limit for Outfall 002 during the July 2006 discharge monitoring period.
3. Smith-Midland submitted a response to the Notice of Violation and Warning Letters on March 1, 2007. The response explained that the pH violation reported in the December 2006 DMR for Outfall 002 was caused by ice forming in the industrial process tanks. Additionally, the response provided a listing of tasks Smith-Midland has undertaken to correct the violations at Outfall 001. These tasks included cleaning the septic tanks, surge tank, both Multi-Flo units, and the chlorine contact tank. The Multi-Flo units were also reseeded with bacteria from another facility. Lastly, an inventory of cleaning products used onsite was completed, and those cleaning products that may cause harm to the biological process were removed from onsite.
 4. Smith-Midland met with DEQ staff on April 10, 2007 to discuss solutions to ensure future compliance with permitted limits. These measures have been incorporated into Appendix A of this order.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15 8(a) and 8(d) orders Smith-Midland, Inc. and Smith-Midland, Inc. agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Smith Midland, Inc. and Smith Midland, Inc. voluntarily agrees, to pay a civil charge of \$3,150.00 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 payable to the "Treasurer of Virginia", delivered to:

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

The payment shall include Smith Midland's Federal Tax ID number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Smith Midland, Inc., for good cause shown by Smith Midland, Inc. or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. 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, Smith-Midland, Inc. admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Smith-Midland, Inc. 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. Smith-Midland, Inc. 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 Smith-Midland, Inc. 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. Smith-Midland, Inc. 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. Smith-Midland, Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Smith-Midland, Inc. 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 Smith Midland 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.

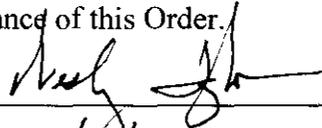
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Smith-Midland, Inc. Notwithstanding the foregoing, Smith-Midland, Inc., agrees to be 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 Smith-Midland, Inc. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Smith-Midland, Inc. 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, Smith-Midland, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of September 26, 2007.



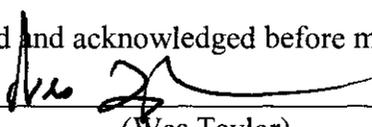
John Bowden, NVRO Deputy Regional Director
Department of Environmental Quality

Smith-Midland, Inc. voluntarily agrees to the issuance of this Order.

By: 

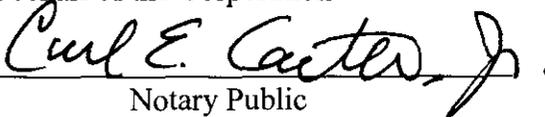
Date: 7/16/07

Commonwealth of Virginia
City/County of FAUQUEN

The foregoing document was signed and acknowledged before me this 16th day of JULY, 2007, by 
_____, who is
(Wes Taylor)

V.P.

(title) of Smith-Midland, Inc., on behalf of the Corporation.



Notary Public

My commission expires: 7-31-08

APPENDIX A

Smith-Midland, Inc. shall:

1. Submit to DEQ for review by August 1, a report outlining the steps already taken, to optimize: (1) the STP (Outfall 001) and (2) the 3-stage treatment system (Outfall 002) for their performance and ensure compliance with Permit limits. The report shall include the following but shall not be limited to:
 - a) A list and description of the characteristics of chemicals currently entering the treatment system.
 - b) Documentation of steps taken to train employees to ensure that excess and inappropriate chemicals do not enter the treatment system.
 - c) Information regarding any influent flow increase since the time the STP was first approved.
2. Increase sampling of the sewage treatment plant (STP) effluent for BOD₅ and TSS from monthly to weekly. This weekly sampling shall commence on August 3, 2007, and continue for the life of this Consent Order.
3. Because of inconsistent sampling results, install a refrigerated auto-sampler by July 27, 2007, which shall be capable of producing an 8 hour composite (8am-3pm) to be used for the weekly samples mentioned in paragraph number 2 above. Samples shall be taken with the composite sampler for 12 consecutive weeks beginning August 3, 2007. Upon request by DEQ, the samples shall be split to enable DEQ to test the samples concurrently with Smith-Midland. At the end of the 12 week sampling program, DEQ shall review the data. If DEQ determines from this data that the current STP is not capable of complying with permit limits, DEQ shall notify Smith-Midland. Within 60 days of DEQ notification, Smith-Midland shall submit to DEQ for review and approval, a plan of corrective action which shall include whether or not Smith-Midland proposes to upgrade the current system or construct a new treatment plant. The plan of corrective action shall also include justification for Smith-Midland's proposal, and a schedule of compliance, which shall be enforceable under this Order.
4. Take influent loading grab samples weekly to coincide with BOD₅ and TSS sampling taken by the composite sampler mentioned in paragraph number 3 above. Grab sample data shall be included in Smith-Midland's DMR which is submitted to DEQ on a monthly basis.

5. Smith-Midland shall submit to DEQ for review and approval an update to the Operations & Maintenance (O&M) Manual to reflect the physical changes to the 3-stage treatment system and methods of operation made since the O&M Manual was originally drafted. This update shall include a current description of the pH control system which has been installed for the industrial treatment system. The due date for the revised Manual shall be 30 days from the execution of this Order.