



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN VIRGINIA REGIONAL OFFICE
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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Jeffery A. Steers
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

CONCRETE PRECAST SYSTEMS, INC.

and

DUBROOK CONCRETE, INC.

d.b.a

ADAPTIVE CONCRETE SOLUTIONS
(VPDES PERMIT NO. VA0090441)

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, Concrete Precast Systems, Inc. and Dubrook Concrete Inc, d.b.a. Adaptive Concrete Solutions, 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 and 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 §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. "CPS" means Concrete Precast, Inc.
7. "Dubrook" or "ACS" means Dubrook Concrete, Inc., d.b.a. Adaptive Concrete Solutions.
8. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
9. "Permit" means Virginia Pollutant Discharge Elimination System (VPDES) Permit No. VA0090441.
10. "O&M" means Operation and Maintenance Manual.
11. "SWPPP" means Storm Water Pollution Prevention Plan.
12. "WQS" means State Water Quality Standards.
13. "Regulation" means 9 VAC 25-31-10 *et seq.*, the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

SECTION C: Finding of Facts and Conclusions of Law

1. Concrete Precast Systems, Inc. owned Concrete Precast Systems – Chantilly (the Facility), which is located in Loudoun County, Virginia.
2. CPS manufactured precast/prestressed concrete products. CPS discharged stormwater to Sand Branch and an unnamed tributary of Sand Branch in the Potomac River Basin, at outfalls 001 and 002, respectively. Discharges of stormwater are the subject of VPDES Permit No. VA0090441.
3. The Permit required that CPS collect a sample of discharges from the outfalls during January – June and July – December of each year and submit the results of the monitoring, in Discharge Monitoring Reports (DMRs) not later than the 10th of the month after

monitoring takes place.

4. The Board has evidence to indicate that CPS has violated the Regulation and the Permit by failing to submit semi-annual monitoring reports between January 2002 through July 2003. DEQ NVRO issued one warning letter (WL) and one notice of violation (NOV) to CPS for the above-referenced violations as follows: WL No. W2003-08-N-1024 issued August 21, 2003 and NOV No. W2003-11-N-0008 issued November 21, 2003.
5. On December 15, 2003, DEQ received a response from CPS along with the DMRs stating that sampling was performed, however, the reports were never submitted. After DEQ reviewed the DMRs, it was learned that the DMRs were missing data and that outfall 002 had not been sampled. It was also learned that CPS failed to prepare and implement a SWPPP, as required by the Permit, due by October 11, 2003.
6. Along with the December 15, 2003 response, CPS notified and requested that DEQ transfer ownership of the Permit from CPS to Dubrook Concrete, Inc. d.b.a. Adaptive Concrete Solutions.
7. On December 19, 2003, DEQ then issued NOV No. W2003-12-N-0009 for failure to submit a completed DMR, failure to sample outfall 002, and failure to prepare and implement a SWPPP due by October 11, 2003 to CPS.
8. On January 15, 2004, DEQ approved the change of ownership for VPDES Permit No. VA0090441 from CPS to Dubrook, which will expire on October 11, 2005.
9. ACS subsequently failed to submit the semi-annual DMR report for July to December 2003, due January 10, 2004. DEQ issued NOV No. W2004-02-N-0003 on February 10, 2004 again for failure to sample a required Permit parameter and submit monitoring results, and failure to prepare and implement a SWPPP. ACS submitted the SWPPP for review on January 20, 2004 and submitted the semi-annual DMR on January 21, 2004.
10. In a previous inspection conducted in October 2002, DEQ advised CPS to monitor the pH of its discharges and recommended that CPS install a pH neutralization system. CPS provided DEQ with a memo stating that CPS would install a pH neutralization system by December 2002.
11. On August 4, 2004, DEQ inspected ACS and found that no pH neutralization system was currently in place at ACS for storm water basin #1 or #2 and that ACS was not conducting the pH sampling at the discharge point. During the August 4, 2004 site inspection, DEQ took pH readings at the discharge point for storm water basin #1 and determined that the

pH result was above the WQS of 9.0 Std. Units. ACS does not have a pH limit in its Permit; however, it does have a special condition for notification levels established by the Board using the State Water Quality Standard for Class III receiving streams.

12. DEQ also noted during the August 4, 2004 site inspection, that the perimeter wall around the Facility's recycled crushed concrete pile, designed to prevent runoff to the stream, had been breached and that the riprap and the drainage channel for outfall 001 contained visible white solids, evidence of a solids discharge in violation of Permit conditions.
13. In addition, upon a further review of the SWPPP and the O&M manual DEQ determined that the existing O&M manual and SWPPP are lacking adequate operational measures and controls for storm water management.
14. On October 7, 2004, DEQ issued NOV No. W2004-09-N-0016 to ACS for: (1) discharging in exceedance of the Water Quality Standards; (2) failing to limit the discharge of solids; and (3) failing to comply with other requirements & special conditions of the Permit to include the operation & maintenance manual, materials handling & storage, and best management practices (BMPs).
15. Subsequent to the August 2004 inspection, DEQ also requested copies of inspection and maintenance records required to be kept by the SWPPP; however, in October 2004, ACS informed DEQ that it was unable to provide those records. DEQ has, as of November 2004, been advised by ACS of the following: (1) ACS began implementing BMPs to minimize the discharge of solids and improve handling and storage; (2) repaired the breach in the wall surrounding the recycled concrete; (3) installed the pH neutralization systems; and (4) drafted inspection and maintenance logs to be incorporated into the revised SWPPP.
16. Appendix A of this Order requires, among other things, that ACS submit a revised O&M manual; dispose of the recycled concrete; and implement and maintain best management practices and comply with other requirements and special conditions of the Permit.

SECTION D: Agreement and Order

Accordingly the State Water Control Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a and 8d), orders CPS and ACS and CPS and ACS agree, to perform the actions described in Appendix A of this Order. In addition, the Board orders CPS and ACS, and CPS and ACS voluntarily agree, to pay a civil charge of \$6,000.00 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 10150
Richmond, Virginia 23240

The parties' Federal Identification Numbers shall be noted on the check and they shall note that payment of the charge is being made in accordance with the requirements of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of CPS and ACS, for good cause shown by CPS and ACS, 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 WL No. W2003-08-N-1024 issued August 21, 2003; NOV No. W2003-11-N-0008 issued November 21, 2003; NOV No. W2003-12-N-0009 issued December 19, 2003; NOV No. W2004-02-N-0003 issued February 10, 2004; and NOV No. W2004-09-N-0016 issued October 7, 2004 issued to CPS or ACS. 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 and ACS admit the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. CPS and ACS consent 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 and ACS declare they have received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and waive 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 and ACS 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 and ACS shall each be responsible for its respective failure to comply with any of the terms and conditions by this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. CPS and ACS shall each show that such circumstances were beyond its respective control and not due to a lack of good faith or diligence on their part. CPS and ACS shall each 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 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, 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, CPS and ACS. Notwithstanding the foregoing, CPS and ACS agree 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 CPS and ACS. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CPS and ACS from their respective obligations to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By their signatures below, CPS and ACS voluntarily agree to the issuance of this Order.

And it is so ORDERED this day of July 5, 2005.

[Signature]
Robert C. Burnley, Director

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

By: [Signature]
Date: 7-18-05

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 18th day of February, 2005, by Paul Oberholzer, who is
(name)
President of Concrete Precast Systems, Inc., on behalf of the corporation.
(title)

[Signature]
Notary Public

My commission expires: 12/31/2005

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

By: [Signature]
Date: Feb 17, 05

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 17 day of

February, 2005, by Thomas Ogorchock, who is
(name)

President of Dubrook Concrete, Inc. on behalf of the corporation.
(title)

[Signature]
Notary Public

My commission expires: 1/3/07

City/County of Fairfax
Commonwealth of Virginia
Sworn to and subscribed before me this
day of Feb 20 05
Witness my hand and official seal.
[Signature] Notary Public

APPENDIX A
SCHEDULE OF COMPLIANCE

ACS shall:

1. Beginning January 1, 2005 and continuing through the cancellation of this Order, ACS shall:
 - a) Conduct monthly sampling at outfall 001 and 002 for flow, total petroleum hydrocarbons, total recoverable iron, total suspended solids and pH. Submit the results to NVRO on a monthly DMR by the tenth of the month after monitoring takes place.
 - b) As required by the SWPPP, conduct the quarterly site inspections and complete any follow-up tracking documentation to ensure appropriate actions are taken. Submit copies of the inspection records to NVRO along with the DMR due for that monitoring period.
 - c) As required by the SWPPP, conduct the semi-annual comprehensive site compliance evaluations. Submit copies of said evaluations to NVRO along with the DMR due for that monitoring period.
 - d) As required by the SWPPP, conduct the semi-annual employee training. Document the topics covered and the employees in attendance. Submit copies of said documentation to NVRO along with the DMR due for that monitoring period.
2. By February 28, 2005, submit a revised O&M manual to NVRO for review and comment. Upon receipt of NVRO comments, ACS shall, within two weeks of receipt of comments, incorporate said comments into the O&M manual. Resubmit a copy of the revised O&M manual within two weeks of revisions to NVRO and ensure the O&M manual is available onsite.
3. Dispose of recycled concrete as the market demands and ensure, at all times, that recycled concrete material is managed and stored to prevent contaminated runoff to state waters.