



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

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Robert G. Burnley  
Director

Steven A. Dietrich  
Regional Director

### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO BONDCOTE CORPORATION

#### SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and BondCote Corp., for the purpose of resolving certain violations of State Air Pollution Control Laws 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 Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 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 Order.
6. "BondCote Corp." means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the structure at 509 Burgis Avenue located in Pulaski, Virginia.

*An Agency of the Natural Resources Secretariat*

8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means the Stationary Source Permit, which became effective November 22, 1994.
10. "O&M" means operations and maintenance.

**SECTION C: Findings of Fact and Conclusions of Law**

1. BondCote Corp. owns and operates a facility located in Pulaski, Virginia. This facility is the subject to the Permit.
2. DEQ has noted violations of the Air Pollution Control Law and Regulations. These problems, noted in a Notice of Violation issued by DEQ on July 1, 2004, include:

On May 20, 2004, DEQ staff conducted a site inspection of the BondCote Corp. facility located in Pulaski, Virginia. During this inspection, staff observed numerous uncovered drums being stored in the mix preparation room of the facility. Upon inquiry, staff was informed that the employees were not following the written operating procedures. Staff informed the facility that covers were needed to reduce the potential for VOC evaporation.

The observation above is cited under the following regulation.

Section 9 VAC 5-40-20 F of the State Air Pollution Control Board Regulations, states that Volatile Organic Compounds shall not be intentionally spilled, discarded in sewers which are not connected to a treatment plant, or stored in open containers or handled in any other manner that would result in evaporation beyond that consistent with air pollution control practices for minimizing emissions.

3. BondCote Corp. is currently working to resolve the cited violation. On July 21, 2004, the facility submitted copies of the annual refresher training. These records indicated the employees trained, the materials trained on, and a sign-off sheet completed by the employees.

**SECTION D: Agreement and Order**

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, and after consideration of the factors set forth in Va. Code § 10.1-1186.2, orders BondCote Corp., and BondCote Corp. voluntarily agrees to pay a civil charge of **\$1,050.00** in settlement of the violations cited in this Order.

1. **\$263.00** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

The payment shall include BondCote Corp.'s Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

2. **\$787.00** of this civil charge shall be satisfied upon completion by BondCote Corp. of a Supplemental Environmental Project (SEP) pursuant to Virginia Code 10.1-1186.2 and as described in Appendix B of this Order.
3. The Department has the sole discretion to:
  - a. authorize any alternate SEP proposed by the Facility; and
  - b. determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
4. Should the Department determine that the SEP, or alternate SEP, has not been completed in a satisfactory manner, the Department shall notify BondCote Corp. of such determination in writing. Within 30 days of such notification, BondCote Corp. shall pay the amount specified in Paragraph 2 above in accordance with the procedures specified in Paragraph 1 above.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of BondCote Corp., for good cause shown by BondCote Corp., 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 Notice of Violation issued to BondCote Corp. by DEQ on July 1, 2004. 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, BondCote Corp. admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. BondCote Corp. 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. BondCote Corp. declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Air Pollution 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 BondCote Corp. 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. BondCote Corp. 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. BondCote Corp. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BondCote Corp. 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 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 and BondCote Corp. Notwithstanding the foregoing, BondCote Corp. 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 BondCote Corp.. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BondCote Corp. 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, BondCote Corp. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8<sup>TH</sup> day of NOVEMBER, 2004.

*Robert G. Burnley*  
For Robert G. Burnley, Director  
Department of Environmental Quality

BondCote Corp. voluntarily agrees to the issuance of this Order.

By: *Frederick D. Nester*

Date: *NOV. 3, 2004*

Commonwealth of Virginia  
City/County of *Pulaski*

The foregoing document was signed and acknowledged before me this *3<sup>rd</sup>* day of  
*November*, 2004, by *Frederick D. Nester*, who is  
(name)

*Plant Manager* of BondCote Corp., on behalf of the Corporation.  
(title)

*Diane M. Lynch*  
Notary Public

My commission expires: *My Commission Expires January 31, 2006*

## APPENDIX B

### SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. The Supplemental Environmental Project (SEP) to be performed by BondCote Corp. is as follows:  
  
Project 1 - Removal and disposal of two (2) existing R12-Freon containing refrigerating units and installation of new non-Freon (HFC-134a refrigerant) containing refrigerating units.
2. The SEP shall be completed by March 31, 2005.
3. BondCote Corp. certifies that they have not commenced performance of the SEP prior to the identification of the violations cited in this Consent Order and the approval of the SEP by the Department.
4. The net cost of the SEP to BondCote Corp. shall not be less than \$787.00. In the event that the final net cost of the SEP is less than this amount, BondCote Corp. shall pay the remainder of the amount in accordance with Paragraph D. 3. of this Order to the Commonwealth of Virginia, unless otherwise agreed to by the Department. Net costs shall mean the costs of the project minus any tax savings, grants and first-year operation cost reductions or other efficiencies.
5. BondCote Corp. acknowledges that it is solely responsible for completion of the SEP. Any transfer of funds, tasks, or otherwise by BondCote Corp. to a third party, shall not relieve BondCote Corp. of its responsibility to complete the SEP as contained in this Order.
6. BondCote Corp. shall provide the Department with written verification of completion or progress reports of the SEP by providing a work schedule. The project completion or progress reports verification must be submitted to the Department within thirty (30) days from the effective date of the Order on a quarterly basis, due the 10th day of each quarter.
7. BondCote Corp. shall submit written verification to the Department in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation of the final overall and net cost of the SEP within thirty (30) days of the project completion date. For the purposes of this submittal, net costs can be either the actual final net costs or the projected net costs if such projected net costs statement is accompanied by a CPA certification or certification from BondCote Corp.'s Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

8. In the event that BondCote Corp. publicizes the SEP or the results of the SEP, BondCote Corp. shall state in a prominent manner that the project is part of a settlement for an enforcement action.
9. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Robert W. Saunders  
Department of Environmental Quality  
West Central Regional Office  
3019 Peters Creek Road  
Roanoke, VA 24019



- environmental compliance promotion       pollution reduction
- emergency planning and preparedness       pollution prevention

**Each of the following factors MUST be considered. Respond to each:**

- Net costs (zero out all government loans, grants, tax credits for project). Explain:

No government loans, grants or tax credits will be secured for this project. The exact cost for this project has not been determined. The estimated cost is between \$350 and \$500 per refrigerating unit upgrade. BondCote Corp. will provide records of actual costs to the WCRO upon completion of the project.

- Benefits to the public or the environment. Explain:

This project will eliminate the possibility for Freon containing material to be released into the environment. By eliminating the possibility of a release, the surrounding geographic nexus is improved.

- Innovation. Explain:

N/A

- Impact on minority or low income populations. Explain:

N/A

- Multimedia impact. Explain:

N/A

- Pollution prevention. Explain