

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION  
SPECIAL ORDER BY CONSENT  
ISSUED TO  
CARPENTER CO.**

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Carpenter Co., for the purpose of resolving certain violations of environmental 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 §§ 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. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
6. “Order” means this document, also known as a Consent Special Order.

7. “Carpenter” means Carpenter Co., a Virginia Corporation with its Corporate Headquarters located at 5016 Monument Avenue, Richmond, Virginia.
8. “Facility” means the Carpenter Co. plant located at 2400 Jefferson Davis Hwy, in Richmond, Virginia.
9. “TDI” means Toluene Diisocyanate (TDI).

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

1. Carpenter owns and operates a flexible polyurethane foam manufacturing facility that is located at 2400 Jefferson Davis Hwy., Richmond, Virginia.
2. On December 18, 2001, the Facility reported a spill to the National Response Center that an unknown amount of product, thought to be TDI, was leaking from a railroad tanker at their location. The initial responders to the spill were the Richmond Fire Dept. and Virginia Dept. of Emergency Management.
3. On December 18, 2001, DEQ staff responded to a request for assistance at the site of the spill. The unpermitted spill of TDI was entering state waters, Broad Rock Creek.
4. TDI, when mixed with water, turns to a granular urea compound. It was determined from the site investigation, that the granular urea compound covered the water surface and the bed of Broad Rock Creek for approximately 3 blocks.
5. On December 18, 2001, A & A Environmental Co. was contracted by Carpenter to clean-up the spill in Broad Rock Creek.
6. On December 22, 2001, Carpenter reported that approximately 6,660 gallons of TDI was spilled. Of the 6,660 gallons spilled, 3,026 gallons were not recovered and assumed to have entered Broad Rock Creek through a drop inlet on the Facility property.
7. On January 9, 2002, a DEQ staff biologist inspected Broad Rock Creek, a tributary to Goode Creek, and Goode Creek to assess the environmental impact to state waters from the TDI spill. The investigation determined that Broad Rock Creek, directly below the spill for approximately 1000 feet was sterile. Above the area of the spill, Broad Rock Creek had an adequate benthic community. Goode Creek, approximately ½ mile below its confluence with Broad Rock Creek, was determined to also have an adequate benthic community.
8. On January 31, 2002, DEQ issued an NOV to Carpenter. The NOV was issued for unauthorized impacts to state waters by an unpermitted discharge of approximately 3,026 gallons of the hazardous chemical, TDI, on December 18, 2001.

9. On February 15, 2002, a meeting was held to discuss resolution of violations cited in the January 31, 2002, NOV.
10. At the February 15, 2002 meeting, Carpenter agreed to provide DEQ with a copy of the Stormwater Pollution Prevention Plan for their Facility, and provide information about the number and location of stormdrains that have the potential to drain hazardous material to state waters at this Facility. Designated stormdrains will be installed with pneumatic devices for the purpose of plugging the drains to prevent future spills which may occur at the Facility from entering state waters.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Carpenter, and Carpenter agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Carpenter, and Carpenter voluntarily agrees, to pay a civil charge of \$10,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for Carpenter. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

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

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

1. The Board may modify, rewrite, or amend the Order with the consent of Carpenter, for good cause shown by Carpenter, 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; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.

3. For purposes of this Order and subsequent actions with respect to this Order, Carpenter admits the jurisdictional allegations, and neither admits or denies the factual findings and conclusions of law contained herein.
4. Carpenter 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. Carpenter 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 Carpenter 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. Carpenter 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. Carpenter shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Carpenter 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 7 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, 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 Carpenter. Notwithstanding the foregoing, Carpenter 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 Carpenter. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Carpenter 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, Carpenter voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

Carpenter voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia  
City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of Carpenter, on behalf of Carpenter.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

## APPENDIX A

Carpenter shall:

1. **By October 1, 2002**, install in pipe, pneumatic *plugs* at the designated point **C**, and slightly downstream of drain grates designated as points **A & B**, as depicted on the attached diagram of Carpenter Co., Richmond Plant.
2. **Within 30 day of completion of work**, submit to DEQ a written report confirming the installation of the plugs.
3. Unless otherwise specified in this Order, all submissions shall be sent to:

Cynthia Akers  
Department of Environmental Quality  
Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060