

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

### **SPECIAL ORDER BY CONSENT WITH COMMERCIAL READY MIX PRODUCTS, INC. - FRANKLIN Permit No. VAG113003**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and Commercial Ready Mix Products, Inc., for the purpose of resolving certain violations of environmental law and/or regulations.

#### **SECTION B: Definitions**

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

1. “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 the 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 the 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. “Commercial” means Commercial Ready Mix Products, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “Regulations” means 9 VAC 25-193-10 *et seq.* – General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Ready-Mixed Concrete Plants.
9. “Permit,” means General VPDES Permit No. VAG113003.

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

1. Commercial owns and operates a ready-mix plant located on Route 58 in Franklin, Virginia. This facility is the subject of the Permit, which became effective October 1, 1998 and expires October 1, 2003. The Permit is a general permit for ready-mix cement plants and coverage under the Permit was provided on October 1, 1998. The Permit allows the discharge of treated wastewater and stormwater to a ditch draining to the Blackwater River, Dismal Swamp and Chowan Basin.
2. Section 62.1-44.5 of the Code and Section 9 VAC 25-193-70 of the Regulations authorize discharges to State waters only in compliance with a permit issued by the Board.
3. Part III.L of the Permit requires that Commercial comply with all conditions of the Permit.
4. Section 62.1-44.31 of the Code states: "It shall be unlawful for any owner to fail to comply with any special order adopted by the Board, which has become final under the provisions of this chapter."
5. Part I.A of the Permit requires Commercial to comply with an average and maximum total suspended solids (TSS) effluent limitation of 30 and 60 mg/L, respectively. Laboratory records indicate Commercial's average and maximum TSS sampling results for August 2002 was 212mg/l; September 2002 was 61 mg/l; October 2002 was 51 mg/l; and November 2002 was 228 mg/l.
6. Part I.B.8 of the Permit requires Commercial to keep an Operations and Maintenance (O&M) Manual on site at the permitted facility and requires that it be made available to the Department upon request. Part I.B.10 of the Permit requires Commercial to maintain a minimum freeboard of one foot in its sedimentation pits at all times and should the one-foot freeboard not be maintained, the Permit requires that Commercial immediately notify the Department. Within 5 days of notification, the Permit requires Commercial to submit a written statement to the Regional Office of explanation for the failure to maintain the required freeboard and corrective measures taken.
7. Part II.H.3.d of the Permit requires Commercial to perform, document, and maintain site inspections in accordance with its storm water pollution prevention plan (SWP3). Part II.H.3.e of the Permit requires Commercial to provide employee training on storm water management and document such training in the SWP3. Part III.A.3 of the Permit requires Commercial to monitor discharges from the site in accordance with the Permit and to periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements. Part III.B.2 of the Permit requires Commercial to retain records of all monitoring information, including all calibration and maintenance records for a period of at least three years from the date of the sample, measurement, report or request for coverage.
8. On December 10, 2002, DEQ compliance staff (Staff) inspected Commercial and observed the following:

- a. Commercial was unable to locate the O&M Manual upon staff's request for review. The O&M Manual was not made available during the inspection.
  - b. The high water mark on the sedimentation pits indicated that the required one-foot of freeboard had not been maintained. DEQ did not receive notification stating the minimum one-foot of freeboard was breached.
  - c. Commercial had not performed and/or documented site inspections from June – December 2002.
  - d. Commercial had not provided and/or documented storm water pollution prevention training for the current site personnel.
9. During the December 10, 2002 inspection, Staff also noted the following laboratory deficiencies:
- a. Instrument calibration was not performed properly or documented consistently for pH.
  - b. Analysis time for pH was not documented for October and November 2002.
  - c. The holding time for the TSS samples taken in August 2002 was exceeded. This was noted on the Certificate of Analysis but not reported on the discharge monitoring report (DMR) by Commercial.
  - d. Preservation for total petroleum hydrocarbons samples was not consistently noted on the Chain of Custody nor was there any notation that the sample preservation was performed or checked for proper pH level.
  - e. Sampling and monitoring records including DMRs, chain of custody records, and certificates of analysis were not maintained on site.
10. Commercial is subject to an October 8, 2002 Consent Special Order. Item #5 in Appendix A of that Order states:

As required by the Permit, Commercial shall continue monthly monitoring, sampling, and reporting of discharges from outfall 001. In addition, Commercial shall conduct monthly monitoring, sampling, and reporting of discharges at outfall 002...Results shall be submitted monthly on DMRs to this office no later than the 10<sup>th</sup> day of the month after monitoring takes place.

Laboratory records obtained by Staff indicate Commercial reported the analysis results for the September, October, and November 2002 monitoring periods inaccurately. The reported results indicated permit limits were not exceeded; however, the laboratory records indicate TSS limits were exceeded five times during this monitoring period (see Item 5. above).

11. Notices of Violation No. W2003-01-T-0001 and W2003-04-T-0004 were issued to Commercial on January 13, 2003, and April 17, 2003, respectively, for the violations cited above.

## **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 Commercial, and Commercial voluntarily agrees, to pay a civil charge of \$17,600 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include Commercial's Federal Identification Number and shall note on its face that payment is being made pursuant to the requirements of this order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," delivered 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 Commercial, for good cause shown by Commercial, 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 Notices of Violation issued to Commercial by DEQ on January 13, 2003 and April 17, 2003. 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 the purpose of this Order only, Commercial admits the jurisdictional allegations in the Order, but does not admit the factual allegations or legal conclusions contained herein.
4. Commercial consents to venue in the Circuit Court of the City of Virginia Beach for any civil action taken to enforce the terms of this Order.
5. Commercial 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 Commercial 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. Commercial 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. Commercial shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Commercial 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 Commercial 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 Commercial. Notwithstanding the foregoing, Commercial agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until Commercial 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. In addition, the Director or the Board may terminate this Order in his or its sole discretion upon 30 days' written notice to Commercial. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Commercial 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, Commercial voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Francis L. Daniel, Tidewater Regional Office for  
Robert G. Burnley, Director  
Department of Environmental Quality

Commercial voluntarily agrees to the issuance of this Order.

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

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

Commonwealth of Virginia

City/County of Franklin, VA

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2003, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of Commercial, on behalf of the Corporation.  
(title)

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

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

## APPENDIX A

### Commercial Ready Mix Products, Inc.

Commercial shall:

1. By **September 1, 2003**, Commercial shall review and revise the O&M Manual to reflect the current conditions on site. By **September 1, 2003**, Commercial shall submit a copy of the O&M Manual to DEQ for review and comment. Upon receiving DEQ's comments, Commercial shall immediately incorporate the comments into the O&M Manual. Commercial shall keep a copy of the O&M Manual on site at all times.
2. By **September 1, 2003**, Commercial shall review and revise the SWP3 to reflect the current conditions on site. By **September 1, 2003**, Commercial shall submit a copy of the SWP3 to DEQ for review and comment. Upon receiving DEQ's comments, Commercial shall immediately incorporate the comments into the SWP3. Commercial shall keep a copy of the SWP3 on site at all times.
3. By **September 1, 2003**, Commercial shall review, revise, and submit a copy of the monthly site inspection form to DEQ for review and comment. Upon receiving DEQ's comments, Commercial shall immediately incorporate the comments into the monthly site inspection form.
4. By **October 1, 2003**, Commercial shall submit the O&M Manual and SWP3 training materials and training session agenda to DEQ for review, comment, and approval. Training shall include methods of sampling and analysis of discharges at Outfall 001 and 002.
  - a. By **October 10, 2003**, Commercial shall perform and document storm water pollution prevention training for all Commercial facility personnel responsible for ensuring compliance with the O&M Manual and SWP3.
  - b. By **October 17, 2003**, Commercial shall submit an attendance sheet from this training to DEQ. Commercial shall keep all training records on site and with the SWP3.
5. Until modification or expiration of the Permit, Commercial shall continue monthly monitoring, sampling, and reporting of discharges from outfall 001 in accordance with the Permit. Upon issuance of the new permit, Commercial shall comply with all monitoring, sampling, and reporting conditions contained therein.
6. Commercial shall conduct monthly monitoring, sampling, and reporting of discharges at outfall 002 in the same manner as required by the Permit for outfall 001. **However, outfall 002 shall be monitored for pH, flow, total suspended solids, and total petroleum hydrocarbons and Commercial shall meet effluent limits for pH at outfall 002, which shall be a minimum of 6.0 su and a maximum of 9.0 su.** Results shall be submitted on monthly DMRs to the Tidewater Regional Office no later than the 10<sup>th</sup> day of the month after monitoring takes place.

7. Commercial shall properly operate and maintain facilities and systems of treatment and control (and related appurtenances) which are installed or used by Commercial to achieve compliance with the conditions of the Permit.
8. All submittals and reports required by this Appendix A shall be mailed to:  
Francis L. Daniel  
Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462