



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

[www.deq.virginia.gov](http://www.deq.virginia.gov)

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

Robert G. Burnley  
Director

Gerard Seeley, Jr.  
Regional Director

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO MECHANICSVILLE CONCRETE, INCORPORATED Permit No. VAG110160

#### **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 Mechanicsville Concrete, Incorporated, 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. "Order" means this document, also known as a Consent Special Order.
6. "MC Inc" means Mechanicsville Concrete, Incorporated, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Facility” means the Henrico Plant located on Portugee Road in Henrico County, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means VPDES General Permit for Ready-mix concrete plants designated as number VAG11 which became effective October 1, 2003, and expires September 30, 2008. MC Inc reapplied for the Permit on September 25, 2003, was issued registration No. 0160, and received coverage under the Permit effective April 21, 2004.
10. “O&M” means operations and maintenance.

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

1. MC Inc owns and operates a ready mix concrete Facility in Henrico County, Virginia. This Facility is the subject of VPDES Permit No. VAG110160, which allows MC Inc to discharge stormwater in strict compliance with terms, limitations and requirements outlined in the Permit.
2. MC Inc was required by its previous Permit to reapply for coverage at least 180 days before the Permit expires. The reapplication was due on April 4, 2003; however the application was not submitted until September 25, 2003. As a result, the Facility was operating without a permit from October 1, 2003 to April 21, 2004.
3. During the application process, Facility staff were informed that a permit could not be issued allowing discharge of process wastewater into White Oak Swamp Creek due to special standards for the Chickahominy River Watershed. Permitting options were discussed and MC Inc showed that it had the ability to recycle 100% of its process wastewater. The Facility piping was modified to discharge only stormwater.
4. The Department inspected the Facility on April 15, 2004 and confirmed that the piping modifications were completed. The April 15<sup>th</sup> inspection revealed compliance issues with solids handling and housekeeping. The inspection report, mailed to MC Inc on May 14, 2004, requested a written response addressing the compliance recommendations made by DEQ staff on or before June 15, 2004. A response to the recommendations was not provided.
5. In response to a citizen’s complaint, Department staff conducted an inspection of this Facility on August 5, 2004, and observed an unauthorized discharge. Facility staff were observed pumping water from the settling basins into a truck and emptying the truck into a stormwater ditch. The stormwater ditch leads directly to the Chickahominy watershed by way of White Oak Swamp Creek. When questioned by Department staff, the Plant Manager stated that he could discharge in this way when there was too much water in the settling basins. Department

staff instructed the plant manager to stop the discharge because it was not authorized by its Permit.

#### **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 MC Inc, and MC Inc voluntarily agrees, to submit a written response to the April 15, 2004, inspection report and pay a civil charge of \$16,250 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 MC Inc. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and 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 MC Inc, for good cause shown by MC 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, including those matters addressed in the Notice of Violation issued to MC Inc by DEQ on November 12, 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, MC Inc admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. MC 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. MC 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 MC 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. MC 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. MC Inc shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. MC 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 MC Inc 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 MC Inc. Notwithstanding the foregoing, MC 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:
  - a. MC Inc 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; or

b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to MC Inc.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve MC 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, MC Inc voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of September 29, 2005.

Robert G. Burnley J. (for)  
Robert G. Burnley, Director  
Department of Environmental Quality

MC Inc voluntarily agrees to the issuance of this Order.

By: John M Boston, Treas  
Date: 8/22/05

Commonwealth of Virginia  
City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 22nd day of Aug., 2005, by John M Boston, who is  
(name)

Treasurer of MC Inc, on behalf of the Corporation.  
(title)

Lucy Herin  
Notary Public

My commission expires: 11/31/2009