



# 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

**ROWE CONCRETE, L.L.C.**  
**(KING GEORGE, STAFFORD, SPOTSYLVANIA)**  
**(REGISTRATION STATEMENT NOS. VAG110128, 110186, 110187)**

#### **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 and Rowe Concrete L.L.C. 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. “Rowe Concrete” means Rowe Concrete L.L.C.
7. “NVRO” means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
8. “General Permit” means General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Ready-Mixed Concrete Plants.
9. “O&M” means Operation and Maintenance Manual.
10. “SWPPP” means Storm Water Pollution Prevention Plan.

### **SECTION C: Finding of Facts and Conclusions of Law**

1. Rowe Concrete L.L.C. owns and operates Rowe Concrete Plants in King George County, Stafford County, and Spotsylvania County. The three ready-mix concrete plants provide products to residential builders, site concrete contractors, road and bridge contractors, and commercial builders.
2. Rowe Concrete is authorized to discharge process wastewater and stormwater associated with industrial activity. King George discharges to an unnamed tributary of Guitcatic Run in the Rappahannock River Basin; Stafford discharges to an unnamed tributary of Accokeek Creek in the Potomac and Shenandoah River Basins; and Spotsylvania discharges to an unnamed tributary of Ni River in the Rappahannock River Basin. Discharges of wastewater and stormwater for the King George, Stafford and Spotsylvania plants are covered under the General Permit and have been issued Registration Nos. VAG110128, VAG110186, and VAG110187, respectively.
3. The Permit required that Rowe Concrete reapply for coverage under the General Permit if the permittee wishes to continue an activity regulated by the General Permit. DEQ requested that Rowe Concrete submit the Registration Statement for the King George plant by July 31, 2003. DEQ contacted Rowe Concrete on several occasions concerning submission of the registration statement. In addition, in October 2003, DEQ held an outreach session to provide information concerning the upcoming General Permit re-issuance. Rowe Concrete neither responded to the messages nor attended the outreach session.
4. Rowe Concrete did not submit the Registration Statement for the King George plant until January 5, 2004. At that time, DEQ determined that the Registration Statement was incomplete and requested additional information from Rowe Concrete on January 7 and January 27, 2004.

5. The Board has evidence to indicate that Rowe Concrete has violated VPDES Permit regulation 9 VAC 25-31-50.A and the Permit by failing to reapply for coverage under the VPDES General Permit before expiration of the existing Permit for the King George plant. DEQ issued one warning letter (WL) and six Notices of Violation (NOVs) to Rowe Concrete as follows: WL No. W2003-10-N-102 issued October 23, 2003; NOV No. W2003-11-N-101 issued November 24, 2003; NOV No. W2003-12-N-101 issued December 19, 2003; NOV No. W2004-01-N-101 issued January 15, 2004; NOV No. W2004-02-N-101 issued February 10, 2004; NOV No. W2004-03-N-101 issued March 8, 2004; and NOV No. W2004-04-N-101 issued April 6, 2004.
6. DEQ received the requested information concerning the Registration Statement on March 12, 2004. On March 17, 2004, DEQ deemed the Registration Statement complete and approved Rowe Concrete for coverage under the General Permit.
7. During the discussions concerning the King George plant registration statement, DEQ identified to Mr. Rowe, the contact for Rowe Concrete, that the Stafford and Spotsylvania plants required registration for coverage under the General Permit as well. DEQ received the registration statements for these two plants on March 12, 2004 along with the King George plant information. On March 31, 2004, DEQ registered the Rowe Concrete Stafford and Spotsylvania plants for coverage under the General Permit.
8. With the registration of the concrete plants under the General Permit, DEQ identified the Permit requirements for sampling and reporting as well as the development and implementation of O&M manuals and SWPPPs.
9. During follow on conversations with Mr. Rowe, DEQ learned that Rowe Concrete had not developed and or implemented the O&M manuals or the SWPPPs for the King George, Stafford or Spotsylvania plants in accordance with the Permit requirements. It was also learned that Rowe Concrete had not sampled or submitted DMRs for the months of April, May and June 2004 for the King George, Stafford and Spotsylvania plants. DEQ issued nine subsequent WLs to Rowe Concrete for the King George, Stafford and Spotsylvania plants as follows: on June 11, 2004, WL No. W2004-06-N-1002, WL No. W2004-06-N-1003, and WL No. W2004-06-N-1004, respectively, for failure to sample and submit a discharge monitoring report (DMR) for the April 2004 monitoring period which was due on May 10, 2004; on July 13, 2004, WL No. W2004-07-N-1001, WL No. W2004-07-N-1002, and WL No. W2004-07-N-1003, respectively, for failure to sample and submit a DMR for the May 2004 monitoring period which was due on June 10, 2004; and August 5, 2004, WL No. W2004-08-N-1005, WL No. W2004-08-N-1006, and WL No. W2004-08-N-1007, respectively, for failure to sample and submit a DMR for the June 2004 monitoring period which was due on July 10, 2004.

10. Based on a review of the July discharge monitoring report (DMR), agency files and site visits at the three plants, on September 9, 2004, DEQ issued NOVs to Rowe Concrete for the King George, Stafford, and Spotsylvania plants as follows: NOV No. W2004-09-N-1006 for failure to properly manage waste concrete solids at the King George plant. NOV No. W2004-09-N-0007 for failure to comply with permit effluent limitations for pH and failure to comply with permit requirements for reporting corrective actions at the Stafford plant and NOV No. W2004-09-N-0008 for failure to comply with permit effluent limitations for pH, failure to comply with permit requirements for reporting corrective actions, and failure to comply with minimum freeboard in settling basins at the Spotsylvania plant.
11. Based on subsequent DMRs and follow up site inspections, on October 7, 2004, DEQ issued NOVs to Rowe Concrete for the King George, Stafford and Spotsylvania plants respectively as follows: NOV No. W2004-10-N-0003 for failure to comply with permit effluent limitations for pH; NOV No. W2004-10-N-004 for failure to comply with permit effluent limitations for pH and TSS, and NOV No. W2004-10-N-0005 for failure to comply with permit effluent limitations for pH and failure to minimize or prevent any discharges that could adversely affect human health or the environment. On November 18, 2004, DEQ issued NOV No. W2004-11-N-0011 for failure to comply with permit effluent limitations for pH at the King George plant.
12. Rowe Concrete has since developed the SWPPP for the King George plant and established a laboratory contract for sampling for the King George, Stafford, and Spotsylvania plants. Rowe Concrete is also in the process of developing the O&M manuals for all three plants as well as the SWPPPs for the Stafford and Spotsylvania plants. In addition, Rowe Concrete installed the pH system at the Spotsylvania plant.
13. Appendix A of this Order requires that Rowe Concrete submit the O&M manuals and SWPPPs to DEQ for review and comment; install pH systems at the King George and Stafford plants; implement and maintain best management practices and other requirements and special conditions as required by the General 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 Rowe Concrete and Rowe Concrete agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Rowe Concrete, and Rowe Concrete voluntarily agrees, to pay a civil charge of \$10,000.00 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 Number shall be noted on the check and it 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 Rowe Concrete, for good cause shown by Rowe Concrete, 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 WLs and NOVs listed in Section C above. 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 plants 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, Rowe Concrete admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Rowe Concrete 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. Rowe Concrete 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 Rowe Concrete 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.

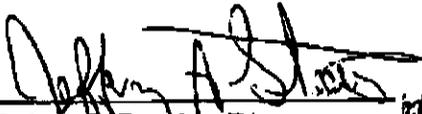
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Rowe Concrete shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Rowe Concrete shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rowe Concrete 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 Rowe Concrete 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 Rowe Concrete. Notwithstanding the foregoing, Rowe Concrete 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 Rowe Concrete. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rowe Concrete 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, Rowe Concrete voluntarily agrees to the issuance of this Order.

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

  
Robert G. Burnley, Director  
Department of Environmental Quality

Rowe Concrete voluntarily agrees to the issuance of this Order.

By: 

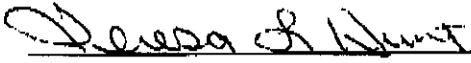
Date: 1/31/05

Commonwealth of Virginia  
City/County of King George

The foregoing document was signed and acknowledged before me this 31<sup>ST</sup> day of

January, 2005, by Kendall F. Rowe Jr., who is  
(name)

President of Rowe Concrete L.L.C., on behalf of the company.  
(title)

  
Notary Public

My commission expires: 2/29/08

## **APPENDIX A SCHEDULE OF COMPLIANCE**

Rowe Concrete L.L.C. shall:

1. By January 3, 2005, submit the O&M manuals for the King George, Stafford, and Spotsylvania plants to DEQ for review and comment. Upon receipt of any comments, but no later than 45 days from receipt of said comments, Rowe Concrete shall incorporate the comments, provide a copy of the revised O&M manuals to DEQ, and maintain the O&M manuals onsite.
2. By January 3, 2005, submit the SWPPPs for the Stafford and Spotsylvania plants to DEQ for review and comment. Upon receipt of any comments, but no later than 45 days from receipt of said comments, Rowe Concrete shall incorporate the comments, provide a copy of the revised SWPPP to DEQ, and maintain the SWPPPs onsite.
3. In accordance with the terms of the Permit, perform and document the next required visual examination of storm water discharges for each outfall at the King George, Stafford, and Spotsylvania plants. Submit copies of the documentation for review and comment along with the DMRs due January 10, 2005.
4. Beginning with the February 10, 2005 DMR submittals, submit to DEQ for review and comment, copies of all completed inspection forms in accordance with the monitoring and inspection plan for each plant's respective SWPPP. All documentation shall include at a minimum, any inspection, monitoring assessment, evaluation, training, reporting, erosion and sediment control and best management practices that are documented as part of each plan. Rowe Concrete shall continue to submit copies of all completed forms for a period of one year effective with the February 10, 2005 DMR submittal, unless otherwise determined by DEQNVRO. Rowe Concrete shall ensure that all completed inspection forms are maintained onsite and available for review in accordance with the terms of the Permits.
5. By June 30, 2005, complete construction and installation of the settling basins and the pH treatment system at the King George plant. Notify DEQ in writing within seven (7) days of completion of construction.