

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
ROYSTER-CLARK RESOURCES LLC**

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 Royster-Clark LLC, 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. “Royster-Clark” means Royster-Clark Resources LLC, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Facility” means the Petersburg AgriTerminal located in Prince George, Virginia.

8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Royster-Clark owns and operates a fertilizer storage and transportation facility known as Petersburg AgriTerminal in Prince George, Virginia.
2. In a letter dated January 9, 1986, Petersburg AgriTerminal asked the Department if there were any special requirements as to the diking (other than normal diking requirements) for installing a 500,000 gallon carbon steel tank for storing di-ammonium Phosphate. The Department responded on January 22, 1986, that there were no special requirements as to the dike, but if stormwater is to be released from the dike area, a VPDES permit would be required.
3. On April 5, 2002, the Department was notified that stormwater was discharging from the bermed tank area. On April 9, 2002, Department personnel inspected the Royster-Clark facility. During the inspection the plant manager stated that they had discharged stormwater the week before. In addition, the plant manager stated there was no permit for discharging to state waters. Samples taken from a small pool of water that remained underneath the discharge pipe were analyzed for total kjeldahl nitrogen and total phosphorous. The results were 16,700 mg/l and 650 mg/l respectively.
4. On May 28, 2002, the Department issued NOV No. 02-05-PRO-204 to Royster-Clark for unpermitted discharge.
5. On June 10, 2002, the Department met with Royster-Clark and discussed the above violations.

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 Royster-Clark, and Royster-Clark agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Royster-Clark, and Royster-Clark voluntarily agrees, to pay a civil charge of \$15,400 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 Royster-Clark. Payment shall be by check, certified check, money order, or cashier=s check payable to ATreasurer 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 Royster-Clark, for good cause shown by Royster-Clark, 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. Royster-Clark neither admits nor denies the finding of fact and conclusion of law contained herein. Royster-Clark represents that it has entered into this Consent Special Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Order and complying with its terms, Royster-Clark does not affirmatively admit the allegations of violation and this Order shall not be interpreted as including such admission.
4. Royster-Clark consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order while this Order is in effect.
5. Royster-Clark 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 Royster-Clark 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. Royster-Clark 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. Royster-Clark shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Royster-Clark 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 2 business 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 Royster-Clark. Notwithstanding the foregoing, Royster-Clark 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. Royster-Clark petitions the Regional Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that Royster-Clark has satisfied all the requirements of the Order is a "case decision" within the meaning of the Virginia Administrative Process Act; or

- b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to Royster-Clark.

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

And it is so ORDERED this day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

Royster-Clark 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 Royster-Clark, on behalf of the Corporation.
(title)

Notary Public

My commission expires: _____.

APPENDIX A

Royster-Clark shall:

1. **Immediately** cease unpermitted discharges from the facility. **Until an appropriate permit is issued**, each time that disposal of accumulated water is required to prevent facility damage and/or to maintain adequate freeboard, request Department approval on an appropriate method of wastewater disposal (i.e. pump and haul, land application etc.).
2. **Within thirty (30) days of the issuance of this Order**, submit to the Department an administratively complete application, suitable for approval, for an appropriate permit.
3. **No later than June 30, 2003**, have an appropriate permit in place for this facility.

Pursuant to this Order communications regarding this Order, and its requirements shall be addressed as follows:

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

Royster-Clark shall confirm, in writing, completion of the Order requirements to the above address **five (5) days after completion**.