



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

PIEDMONT REGIONAL OFFICE

4949-A Cox Road
Glen Allen, Virginia 23060
(804) 527-5020
Fax (804) 527-5106
www.deq.state.va.us

Robert G. Burnley
Director

Gerard Seeley, Jr.
Piedmont Regional Director

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
ROYSTER CLARK INCORPORATED
West Point Facility
Permit No. VPA 01418**

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, 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. "CAP" means corrective action plan.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality.
6. "Order" means this document, also known as a Consent Special Order.

7. “Royster Clark” means Royster Clark, Incorporated, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
8. “WestPoint” means the Royster Clark Facility located on 270 Pamunkey Avenue in West Point, Virginia.
9. “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 the WestPoint facility in King William County, Virginia. This facility, formerly named Old Dominion Fertilizer and formerly owned by Lebanon Chemical Corporation, was a liquid fertilizer manufacturing/mixing/distribution dealership that also stored crop protection chemicals (insecticides, herbicides, fungicides) onsite for retail sale to farmers. Royster Clark purchased the facility on December 14, 1998 and discontinued fertilizer manufacturing activities in 2001. Currently Royster Clark uses the facility to clean, treat, store, and distribute seeds.
2. This facility is the subject of VPA Permit No. VA01418, which allows Royster Clark to manage pollutants on site in strict compliance with terms, limitations and requirements outlined in the permit. The WestPoint facility used berms, pads, sumps and tanks to collect and store product spillage for reuse. A groundwater remediation program recycles recovered groundwater for use in the manufacturing process.
3. A Consent Special Order was issued to Lebanon Chemical on August 15, 1988, requiring them to submit a CAP and implementation schedule for groundwater remediation at the site. The WestPoint facility has groundwater contamination beneath the site due to two wash-water storage lagoons and three phosphoric acid pits. The two wash-water lagoons were closed in 1998 and two of the three phosphoric acid pits were closed; the remaining one is no longer in use. After Department review, the CAP was incorporated into the VPA permit. Royster Clark agreed to the change in ownership and accepted all conditions and requirements of the permit by letter dated January 27, 1999.
4. On April 25, 2002, the Department conducted an inspection of the WestPoint facility. The inspection revealed that the groundwater recovery system had ceased operation. Department staff notified Royster Clark in a warning letter dated May 15, 2002, that it was failing to meet the groundwater pumping requirements in the permit. Royster Clark was also cited for failure to submit the 1999, 2000, and 2001 annual reports on the progress of the remediation goals of the CAP. In addition, Royster Clark did not take steps to determine impacts to or protect shallow groundwater wells on the WestPoint facility.

5. On June 17, 2002, the Department sent a letter to Royster Clark reminding them that the application for re-issuance of the permit was due on December 24, 2002.
6. On July 10, 2002, Royster Clark submitted a response to the April 25, 2002, DEQ inspection stating that the groundwater recovery system would be in place and operating by November 1, 2002. On November 6, 2002, Royster Clark informed the Department that the groundwater remediation system was still not operable and that they hoped to have it finished by the end of the year.
7. On December 18, 2002, Royster Clark submitted a permit reapplication to the Department. The Department determined the application was incomplete and informed Royster Clark by letter dated February 18, 2003. The letter requested additional information from Royster Clark by March 18, 2003.
8. On March 5, 2003, the Department issued a warning letter to Royster Clark after an inspection of the WestPoint facility revealed that the groundwater remediation system was not functioning. Royster Clark was also cited for failure to submit the 2002 annual report on the progress of the remediation goals of the CAP.
9. On March 25, 2003, the Department received a revised permit application for the WestPoint facility. Department staff found the re-application incomplete and returned it on April 8, 2003.
10. Between June of 2003 and October 2004, Royster Clark experimented with a series of alternative remediation plans including installing additional wells, phytoremediation, and nutrient management plans.
11. The Department met with Royster Clark on November 21, 2003, to discuss the violations at West Point. On January 20, 2004, and April 14, 2004, the Department met with Royster Clark to review site characterization data and provide comments on the draft revised CAP. Royster Clark submitted the CAP on June 1, 2004, and a meeting was held on July 19, 2004 to discuss them. Additional revisions to the CAP were submitted on October 29, 2004, and the plan was approved by the Department on November 11, 2004.
12. Royster Clark submitted a VPA permit application for the West Point Facility on October 29, 2004, and the application was accepted as complete by the Department on November 9, 2004.

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 \$5,400 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 "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 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; 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. In the interest of resolving this matter without delay and expense of litigation Royster Clark agrees to the entrance of this Consent Order, and admits the jurisdictional allegations of the Order, but neither admits nor denies the Findings of Fact or the Conclusions of Law herein.
4. Royster Clark consents to venue in the Circuit Court of the City of Norfolk for any civil action taken to enforce the terms of this Order.
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 24 hours of learning of any condition above, which Royster Clark 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 Royster Clark. Notwithstanding the foregoing, Royster Clark agrees to be bound by any compliance date that precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Royster Clark 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 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 June 29, 2005.

Robert G. Burnley, Director
Department of Environmental Quality

Royster Clark voluntarily agrees to the issuance of this Order.

By: Billy Pirkle
Date: May 16, 2005

State of Illinois
~~Commonwealth of Virginia~~
City/County of Madison

The foregoing document was signed and acknowledged before me this 17th day of May, 2005, by Billy Pirkle, who is
(name)

Managing Director EHS of Royster Clark, on behalf of the Corporation.
(title)

Cathy S. Hort
Notary Public

My commission expires: 12/19/2007



APPENDIX A

Royster Clark shall:

1. Within 1 month from the issue date of this Order, submit a plan and schedule to fund the completion of the drinking water line and connections required to provide County drinking water to property owners adjacent to the WestPoint Facility. Submit to the Department a letter from the County certifying the receipt of full funding of the extension of County drinking water lines. Off-site wells shall be sampled annually, in accordance with the CAP until the connections are complete. Results shall be submitted to the Department on or before July 15th each year. The first report will be due on July 15, 2005.
2. Within 30 days from the issue date of this Order, place a notice in the deed records informing potential buyers of the environmental issues at the WestPoint Facility. Submit a copy of the confirmation of recording to the Department.
3. Comply with the requirements in the Department approved CAP submitted on October 29, 2004.

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 **within five (5) days of completion**.