



**COMMONWEALTH of VIRGINIA**  
*DEPARTMENT OF ENVIRONMENTAL QUALITY*

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

**PIEDMONT REGIONAL OFFICE**

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Robert G. Burnley  
Director

Gerard Seeley, Jr.  
Piedmont Regional Director

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION  
SPECIAL ORDER BY CONSENT**

**ISSUED TO**

**S. B. COX READY MIX, INC.**

**Permit Nos. VPA00568**

**VPA00564**

**VPA00580**

**VPDES VAG114033**

**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 S.B. Cox Ready Mix, Inc., 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. “S.B. Cox” means S.B. Cox Ready Mix, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Powhatan Facility” means the S.B. Cox Concrete ready-mix concrete plant located at 1920 Anderson Highway in Powhatan County, Virginia.
8. “Goochland Facility” means the S.B. Cox Concrete ready-mix concrete plant located off Route 250 west of Little Tuckahoe Creek in Goochland County, Virginia.
9. “Portugee Facility” means the S.B. Cox Concrete ready-mix concrete plant located at 1601 Portugee Road in Henrico County, Virginia.
10. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. “VPA” means Virginia Pollution Abatement.
12. “Powhatan Permit” means VPA Permit No.00568, which became effective August 21, 1997.
13. “Goochland Permit” means VPA Permit No.00564, which became effective November 6, 1996.
14. “Portugee VPA Permit” means VPA Permit No.00580, which became effective November 16, 2001.
15. “Portugee VPDES Permit” means VPDES Registration No. VAG114033, which became effective October 1, 1998, and expired October 1, 2003.
16. “O&M manual” means operation and maintenance manual.
17. “SMP” means solids management plan.

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

### **Powhatan Facility**

1. S.B. Cox owns and operates a ready-mix concrete plant (Powhatan Facility) in Powhatan County, Virginia. The Powhatan Facility is the subject of VPA Permit No. 00568, which allows S.B. Cox to manage pollutants in strict compliance with terms, limitations and requirements outlined in the Powhatan Permit.
2. The Facility failed to develop an O&M manual and SMP within 90 and 60 days respectively of the Permit issuance.

3. The Facility failed to maintain a minimum of 12 inches of freeboard as required by the Permit. Failure to maintain minimum freeboard was documented during the months of June through September 2003 and January through May 2004. The Facility also failed to submit a quarterly freeboard report for the January through March 2004 monitoring period.
4. An inspection conducted on December 9, 2003, observed the settling basins and the truck pads completely under water and no freeboard in the settling basins. The inspection noted that the recycle pump used to maintain minimum freeboard had been missing since May 2003. The Permit requires the recycle pump be available and operational
5. On January 9, 2004, and May 20, 2004, Notices of Violation were issued for the above violations

### **Goochland Facility**

6. S.B. Cox owns and operates a ready-mix concrete plant (Goochland Facility) in Goochland County, Virginia. The Goochland Facility was the subject of VPA Permit No. 00564, which allows S.B. Cox to manage pollutants in strict compliance with terms, limitations and requirements outlined in the Goochland Permit.
7. Inspections conducted on October 10, 2002 and May 19, 2003, discovered evidence of unpermitted discharges of wastewater from the truck wash-down area. The Facility added an additional section to the containment wall in response to the initial inspection.
8. The May 19, 2003, inspection also noted there was no freeboard in the settling basins. Subsequent review of the facility records indicates that all freeboard measurements in May 2003 failed to meet the minimum 12 inches of freeboard required by the Permit.
9. On May 20, 2004, a Notice of Violation was issued for failure to maintain minimum freeboard and other reporting violations.

### **Portugee Facility**

10. S.B. Cox owns and operates a ready-mix concrete plant (Portugee Facility) in Henrico County, Virginia. The Portugee Facility was the subject of VPA Permit No. 00564, which allows S.B. Cox to manage pollutants in strict compliance with terms, limitations and requirements outlined in the Portugee VPA Permit. The Portugee Facility is also the subject of VPDES Permit No. VAG114033, which allows S.B. Cox to discharge uncontaminated stormwater in strict compliance with terms, limitations and requirements outlined in the Portugee VPDES Permit.

11. Inspections conducted on February 5, 2004 and April 15, 2004, noted an unpermitted discharge to state waters. Subsequent review of Facility records indicates that all freeboard measurements from January 2004 through June 2004 failed to meet the minimum 12 inches of freeboard required by the Permit
12. On May 20, 2004, a Notice of Violation was issued for failure to maintain minimum freeboard, failure to re-apply for its VPDES registration number, and other reporting 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 S.B. Cox, and S.B. Cox agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders S.B. Cox, and S.B. Cox voluntarily agrees, to pay a civil charge of \$21,000 in settlement of the violations cited in this Order.

Payments shall be made in accordance with the following schedule:

<u>Due Date</u>	<u>Amount</u>
July 31, 2005	\$10,500.00
January 31, 2006	\$10,500.00

The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for S.B. Cox. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer 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 S.B. Cox, for good cause shown by S.B. Cox, 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 Facilities 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, S.B. Cox admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. S.B. Cox 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. S.B. Cox 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 S.B. Cox 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. S.B. Cox 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. S.B. Cox shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. S.B. Cox 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 S.B. Cox 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 S.B. Cox. Notwithstanding the foregoing, S.B. Cox 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. S.B. Cox 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 S.B. Cox.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve S.B. Cox 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, S.B. Cox 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

S.B. Cox voluntarily agrees to the issuance of this Order.

By: 

Date: April 26, 2005

Commonwealth of Virginia

City/County of Goodland

The foregoing document was signed and acknowledged before me this 26<sup>th</sup> day of April, 2005, by Morgan S. Nelson, who is  
(name)

President of S.B. Cox, on behalf of the Corporation.  
(title)

Rebecca C. Meade  
Notary Public

My commission expires: December 31, 2007.

## APPENDIX A

S.B. Cox shall:

1. Within 30 days of the issuance of this Order, remove sediment to within 6 inches from the bottom of the sediment basins at the Powhatan, Goochland and Portugee Facilities and adjust the freeboard at each Facility to minimum of 12 inches.
2. Within 60 days of the issuance of this Order, submit to the Department for review and approval, modified O&M Manuals for each facility to include
  - a regular schedule for the removal of accumulated sediment in the basins.
  - a solids management plan
  - procedures for permit reporting requirements.
3. Within 30 days of the issuance of this Order, submit to the Department a complete registration statement for the Portugee VPDES Permit.
4. Within 30 days of the issuance of this Order, submit to the Department for review and approval a corrective action plan (CAP) and schedule for the mitigation of woodland and stream impacts associated with the discharge of cement from the Portugee Plant and implement the plan once approved. The Department approved CAP and schedule shall become an enforceable part of this Order.

**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

S.B. Cox shall confirm, in writing, completion of the Order requirements to the above address **within five (5) days of completion.**