COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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L. Preston Bryant, Jr
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION -- SPECIAL ORDER BY CONSENT
ISSUED TO
CONTRACTORS PAVING COMPANY, INC.
VPDES Registration No. VAR051467

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Contractors Paving Company, Inc., for the purpose of resolving certain violations of the State Water Control Law, and the applicable permit and regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.

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. "CPC" or "Contractors Paving" means Contractors Paving Company, Inc., a corporation registered and authorized to do business in Virginia, and its affiliates, partners, subsidiaries and parents. Contractors Paving is a "person" within the meaning of Va. Code § 62.1-44.3.

4. "CSCE" means comprehensive site compliance evaluation.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

6. "Director" means the Director of the Department of Environmental Quality as described in Va. Code § 10.1-1185.

7. "DMR" means Discharge Monitoring Report.

8. "Facility" means the Contractors Paving facility at 3431 Trant Avenue, Norfolk, Virginia, at which it manufactures asphalt paving material.

9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

10. "Order" means this document, also known as a "Special Order by Consent" or a "Consent Special Order."

11. "Permit" means VPDES General Permit No. VAR05 for Storm Water Discharges Associated with Industrial Activity, which was effective July 1, 2004, and expires June 30, 2009, and which will be reissued effective July 1, 2009, and expire June 30, 2014.

12. "Regulation" means 9 VAC 25-151-10 *et seq.* - the VPDES General Permit for Storm Water Discharges Associated with Industrial Activity.

13. "Sector D" means Industry Sector D defined by the Regulation as that sector of industry engaged, in part, in the manufacture of asphalt paving and roofing materials.

14. "State Water Control Law" means Chapter 3.1 (§§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

15. "SWP3" means storm water pollution prevention plan.

16. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

17. "Va. Code" means the Code of Virginia (1950), as amended.

18. "VAC" means the Virginia Administrative Code.

19. "VPDES" means the Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. CPC owns and operates the Facility, an asphalt plant in Norfolk, Virginia. Storm water discharges from the Facility are subject to the Permit, through Registration No. VAR051467. Storm water from the Facility discharges to unnamed tributaries to the Eastern Branch of the Elizabeth River ("Eastern Branch").

2. The Eastern Branch is located in the James River Basin and is listed in DEQ's 305(b) report as impaired for estuarine bioassessments, *Enterococcus,* and elevated tributylin ("TBT"). The source of the TBT impairment is believed to be related to shipbuilding and repair; the source of the estuarine bioassessments impairment is contaminated sediments (resulting from historic spills and discharges of industrial wastewaters); and the source of the *Enterococcus* impairment is unknown.

3. CPC is required to develop and implement a Facility SWP3 according to requirements outlined in Part III and Part IV.C (for Sector D) of the Permit.

4. Part I.A.1.a of the Permit requires CPC to perform and document visual examinations of the quality of storm water discharges from the three storm water outfalls identified in the Permit (Outfalls 001, 002 and 003) once each calendar quarter.

5. Part I.A.1.b and Part IV.E (for Sector D) of the Permit require CPC to conduct benchmark monitoring of storm water discharges from the Facility's three permitted storm water outfalls for the presence of one pollutant of concern [total suspended solids ("TSS")] once during each benchmark monitoring period identified in the Permit; record benchmark monitoring results on a DMR; and maintain the DMR with the Facility SWP3.

6. DEQ staff had conducted a routine compliance inspection on September 16, 2005, and noted deficiencies in, among other things, quarterly visual examinations and benchmark monitoring of storm water discharges and the failure to update the Facility SWP3 and site map to include all points at which storm water was discharging from the Facility. These deficiencies were noted in a Warning Letter dated October 6, 2005. CPC responded to the Warning Letter by letter dated October 10, 2005, asserting that it would begin the visual examinations and benchmark monitoring as required by the Permit and eliminate the discharge point not identified in the Facility SWP3.

7. During a DEQ Facility inspection on January 14, 2009, and a subsequent review of written material provided by CPC on January 15, 2009, DEQ staff documented the following Permit compliance deficiencies with respect to monitoring requirements:

   a. The quarterly visual examinations of storm water quality required by Part I.A.1.a of the Permit had not been performed at Outfalls 001 and 003 for the last three quarters of calendar year 2007 or for any quarter in calendar year 2008.

   b. Benchmark monitoring of storm water discharges required by Part I.A.1.b and Part IV.E (for Sector D) of the Permit had not been conducted at Outfalls 001 and 003 for the benchmark monitoring periods July 1, 2006, through June 30, 2007, and July 1, 2007, through June 30, 2008.

8. CPC violated Permit conditions Part I.A.1.a., Part I.A.1.b., and Part IV.E (for Sector D) as noted in paragraph C.7 of this Order.

9. Part III.B.2.c(7) of the Permit requires that the SWP3 include a site map that identifies the locations of storm water outfalls and an approximate outline of the areas draining to each outfall. That Permit requirement is incorporated into Part 11.2 and Appendix A of the SWP3.

10. Part III.B.6.b of the Permit outlines those best management practices ("BMPs") that may be included in a SWP3 to control storm water at the Facility. Part III of the Permit provides that those BMPs that are included in the SWP3 are a condition of and enforceable under the Permit.

11. Part III.B.6.b(1)(a) of the Permit provides that a SWP3 may include good housekeeping practices so as to minimize the potential of contributing pollutants to storm water discharges. Parts 4.3 and 8.0 of the SWP3 detail the good housekeeping practices to be followed at the Facility.

12. Part III.B.6.b(1)(e) of the Permit provides that a SWP3 may include a schedule (at least quarterly) for conducting routine Facility inspections. Part IV.C (for Sector D) of the Permit

requires that certain areas within the Facility related to asphalt production (e.g., material storage and handling areas) be inspected monthly. Part III.B.6.b(1)(e) also requires that the results of a Facility inspection be documented in the SWP3 along with any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified during the inspection. Part 5.2 and Appendix G of the SWP3 require quarterly inspections of the Facility and outline inspection requirements. Areas within the Facility to be inspected monthly are addressed in Part 5.4 and Appendix P of the SWP3.

13. Part III.E of the Permit requires that a CSCE be conducted at least annually; that the report of the CSCE either identify incidents of noncompliance or contain a certification that the Facility is in compliance with the SWP3 and the Permit; and that the report of the CSCE be signed and certified. Those Permit requirements are incorporated into the SWP3 at Part 5.3 and Appendix H.

14. During the DEQ Facility inspection on January 14, 2009, DEQ staff reviewed the Facility SWP3 and documented Permit compliance deficiencies, with respect to SWP3 requirements, including the following:

    a. Storm water was apparently discharging from two outfalls not identified in the SWP3 and the associated site map, and the SWP3 and site map did not outline the areas within the Facility that drain to the outfalls that were identified therein as required by Part III.B.2.c(7) of the Permit and Part 11.2 and Appendix A of the SWP3.

    b. The Facility was not being maintained in such a manner as to minimize the potential of contributing pollutants to storm water discharges as required by Part III and Part III.B.6.b(1)(a) of the Permit and Parts 4.3 and 8.0 of the SWP3. Specifically, stained soil was observed in several locations in the production area.

    c. Results of monthly Facility inspections were not documented in the SWP3 as required by Part III, Part III.B.6.b(1)(e) and Part IV.C (for Sector D) of the Permit and Parts 5.2 and 5.4 and Appendices G and P of the SWP3.

    d. Reports of quarterly Facility inspections did not document corrective actions that were taken in response to deficiencies or opportunities for improvement that were identified during the inspections as required by Part III and Part III.B.6.b(1)(e) of the Permit and Part 5.2 and Appendix G of the SWP3.

    e. The report of the CSCE for the benchmark monitoring period from July 1, 2007, to June 30, 2008, neither identified incidents of noncompliance nor contained a certification that the Facility was in compliance with the SWP3 and the Permit, nor was the report signed and certified as required by Part III.E of the Permit and Part 5.3 and Appendix H of the SWP3.

15. CPC violated Permit conditions Part III, Part III.B.2.c(7), Part III.B.6.b(1)(a) and (e), Part III.E and Part IV.C (for Sector D), and SWP3 conditions Parts 4.3, 5.2, 5.3, 5.4, 8.0 and 11.2 and Appendices A, G, H and P as noted in paragraph C.14 of this Order.

16. On March 5, 2009, DEQ issued NOV W2009-01-T-0002 to CPC. The NOV advised CPC of the violations of Permit conditions Part I.A.1.a., Part I.A.1.b., Part III, Part III.B.2.c(7), Part III.B.6.b(1)(a) and (e), Part III.E, and, for Sector D, Part IV.C and IV.E, and SWP3

conditions Parts 4.3, 5.2, 5.3, 5.4, 8.0 and 11.2 and Appendices A, G, H and P revealed during the inspection conducted by DEQ staff on January 14, 2009.

17. CPC responded to the NOV by letter dated March 12, 2009, which stated that CPC would (a) begin performing Permit-required benchmark monitoring and visual examinations of storm water quality and, (b) by March 27, 2009, amend the facility SWP3 by modifying the forms for both routine facility inspections and annual CSCEs to include all Permit-required elements, eliminating from the site map the existing Outfall 002, and adding to the site map one of the newly identified discharge points as the new Outfall 002. CPC's response also stated that by June 30, 2009, it will have capped the existing Outfall 002 (which has not been actively discharging); redirected storm water flow from one of the newly identified discharge points to a permitted outfall; and begun sampling and monitoring of the newly designated Outfall 002.

18. CPC responded further by letter dated March 30, 2009, in which it enclosed (a) revised forms for routine Facility inspections and annual CSCEs; (b) reports of quarterly visual examinations of storm water quality for Outfalls 001 and 003 for the 1st Quarter 2009; and (c) DMRs recording the results of benchmark monitoring of Outfalls 001 and 003 for the benchmark monitoring period from July 1, 2008, to June 30, 2009. The response noted further that CPC was updating its site map.

19. At the invitation of CPC, DEQ enforcement staff visited the Facility on May 6, 2009, and noted substantial improvement in storm water management practices. The former Outfall 002 had been sealed with concrete and one of the newly identified discharge points designated as Outfall 002. The other newly identified discharge point had been designated Outfall 004. Low asphalt berms had been constructed along the perimeter of the Facility to direct storm water to the controlled storm water outfalls and additional rip rap installed at each outfall to trap suspended solids before they can be discharged from the Facility.

20. During the enforcement staff visit on May 6, 2009, CPC representatives provided the following: (a) a revised SWP3 (and site map) that addresses storm water management at all four discharge points (including the newly designated Outfalls 002 and 004) and updates the forms for recording monthly and quarterly Facility inspections and CSCEs to include post-inspection corrective action; (b) the routine Facility inspections for March and April 2009; (c) reports of quarterly visual monitoring of storm water quality at all four outfalls for the 1st and 2nd Quarters of 2009; (d) the reports of benchmark monitoring of all four outfalls for the July 1, 2008, to June 30, 2009, benchmark monitoring period; (e) a corrective action plan to reduce the concentration of TSS in the discharges from newly designated Outfalls 002 and 004 (both had exceeded benchmark concentrations); and (f) a registration statement for the Permit that will be effective July 1, 2009. The report of the March 2009 Facility inspection noted that the stained soil observed during the January 14, 2009, DEQ inspection had been remedied.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a) and (8d), the Board orders CPC, and CPC agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $9,619 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

CPC shall include its Federal Employer Identification Number with the civil charge payment and shall indicate that the payment 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 CPC, for good cause shown by CPC, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specified in Section C of this Order. 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, CPC admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. CPC 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. CPC declares it has received fair and due process under the Administrative Process Act 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 modify, rewrite, amend, or enforce this Order.

6. Failure by CPC 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. CPC 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 act of God, war,

strike, or such other occurrence. CPC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CPC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days 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 verbally within 24 hours and within three business days, of learning of any condition above, which CPC 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 CPC. Nevertheless, CPC 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. CPC petitions the Director or his designee to terminate the Order after it has completed all 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 written notice to CPC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CPC from its obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules, or specifications attached hereto or submitted by CPC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of CPC certifies he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind CPC to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of CPC.

14. By its signature below, CPC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2009.

_____
Francis L. Daniel

Contractors Paving Company, Inc., voluntarily agrees to the issuance of this Order.

Date: May, 11, 2009 By: _____, Pres. _____
(Person) (Title)
Contractors Paving Company, Inc.

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 11th day of May, 2009, by Robert C. Teets, who is President of Contractors Paving Company, Inc., on behalf of the Corporation.

Lynn G. Williams
Notary Public

My commission expires: _____.

Commonwealth of Virginia
Lynn G. Williams - Notary Public
Reg. #: 230122
My Commission Expires 9/30/2012

APPENDIX A

Contractors Paving shall:

1. By October 10, 2009, January 10, 2010, April 10, 2010, and July 10, 2010, submit to DEQ Tidewater Regional Office, reports of all Facility inspections and visual examinations of storm water quality conducted by or on behalf of CPC to ensure compliance with the Facility SWP3 and the Permit during the preceding three-month period. Reports shall include any corrective action taken in response to deficiencies noted during any inspection or examination.

2. Notwithstanding Part I.A.1.b of the Permit, submit to TRO the DMRs recording the results of benchmark monitoring of storm water discharges from all permitted storm water outfalls required by Part I.A.1.b and Part IV.E (for Sector D) of the Permit for the benchmark monitoring periods July 1 to December 31, 2009, and January 1 to December 31, 2010. DMRs are to be submitted, respectively, by January 10, 2010, and January 10, 2011. Should any DMR reflect that the concentration of the pollutant of concern (TSS) identified in Part IV.E (for Sector D) of the Permit has exceeded the benchmark concentration prescribed therein at any one of the permitted storm water outfalls, CPC shall submit a corrective action plan ("plan") and schedule to reduce the concentration of that pollutant of concern in storm water discharges to a level below the benchmark concentration. That plan and schedule shall be submitted to DEQ for review and approval within 60 days after submitting the DMR that reflects that the benchmark concentration had been exceeded.

3. Comply with all conditions of the Permit.

4. Mail all submittals and reports required by this Appendix A to:

   Mr. Francis L. Daniel, Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Blvd.
   Virginia Beach, VA 23462