



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward
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Director

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT

ISSUED TO

A&R Logistics, Inc.

VPDES Permit No. VAR05

Storm Water Registration No. VAR051828

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §62.1-44.15 between the State Water Control Board and A&R Logistics, Inc. for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

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

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "A&R" means A&R Logistics, Inc., a corporation authorized to do business in Virginia and its affiliates, partners and subsidiaries. A&R is a "person" within the meaning of Va. Code §62.1-44.3.
3. "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.
4. "CSCE" means comprehensive site compliance evaluation.

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, as described in Va. Code § 10.1-1185.
6. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10.
7. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. “DMR” means Discharge Monitoring Report.
9. “Facility” means A&R’s bulk transportation, packaging, distribution and logistics of plastic resin facility located at 5100 Bainbridge Boulevard in Chesapeake, Virginia, from which discharges of stormwater associated with industrial activity occurred.
10. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
12. “Permit” means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. A&R applied for registration under the Permit and was issued Registration No. VAR051828 on July 1, 2014.
13. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
14. “Pollution” means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for

recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

15. “Regulation” means the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10, *et seq.*
16. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. “State Waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. “SWP3” means Stormwater Pollution Prevention Plan.
19. “Total Daily Maximum Load” or “TMDL” means The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources and natural background, plus a margin of safety (MOS). TMDLs can be expressed in terms of mass per time, toxicity, or other appropriate measures that relate to a state's water quality standard.
20. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
21. “Va. Code” means the Code of Virginia (1950), as amended.
22. “VAC” means Virginia Administrative Code.
23. “VPDES” means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. A&R leases and operates part of the Facility at 5100 Bainbridge Boulevard in Chesapeake, Virginia, which discharges stormwater associated with industrial activity.
2. The Permit allows A&R to discharge stormwater associated with industrial activity from the Facility to Mains Creek, a tributary of the Southern Branch of the Elizabeth River (Upper), in strict compliance with the terms and conditions of the Permit.

3. Mains Creek is located in the James River Basin. Mains Creek is listed in DEQ's 305(b) report as impaired for aquatic life use based on dissolved oxygen concentrations that are below the minimum criteria and for fish consumption due to Polychlorinated Biphenyls and dioxins in fish tissue. Industrial point source discharges are listed among the potential sources of the impairments.
4. During a DEQ Facility inspection on May 20, 2015 and a subsequent Facility records review, DEQ staff documented the following compliance deficiencies with respect to the requirements of the Permit:
 - a. Benchmark monitoring and Chesapeake Bay TMDL monitoring records for the 2nd semi-annual monitoring period of 2014 and all of 2015 were not submitted.
 - b. A SWP3 was not provided upon request.
 - c. Records of employee training for 2013 and 2014 were not provided upon request.
 - d. Records of quarterly routine site inspections for the 4th quarter of 2013, all of 2014 and the 1st quarter of 2015 were not provided upon request.
 - e. Records of annual outfall evaluation for unauthorized discharges for 2012, 2013 and 2014 were not provided upon request.
 - f. Records of CSCEs for 2012, 2013 and 2014 were not provided upon request.
5. Part I.A.5 and Part II.C.2 of the Permit require discharge monitoring and the sampling results to be submitted to DEQ on a DMR.
6. Part III.F.2 of the Permit requires a copy of the SWP3 to be retained at the Facility and provided upon request.
7. Part III.B.4.b(6) of the Permit requires that Facility employees be trained in storm water pollution prevention and that the SWP3 contain a record of training performed.
8. Part III.B.5 of the Permit requires that the Facility be inspected at least quarterly for compliance with the Facility SWP3 and the inspection results documented in the SWP3.
9. Part III.D.2 of the Permit requires annual evaluations for unauthorized discharges be documented in the SWP3.
10. Part III.E.3 of the Permit requires that a CSCE be conducted at least annually and a written report of the inspection be kept with the SWP3.
11. On August 13, 2015, TRO issued NOV No. W2015-08-T-0001 and on February 9, 2016, TRO issued NOV No. W2016-02-T-0001 for the violations noted in paragraphs C(4) through C(10), above.
12. On August 31, 2015, DEQ staff met with A&R representatives to discuss the NOV. During the meeting, A&R submitted a SWP3, training records and the 2015 CSCE.

- A&R indicated that it had sold the Facility and was leasing and operating on a small portion of the Facility.
13. On January 18, 2016, A&R submitted a request to terminate coverage under the Permit since a new owner has assumed responsibility for the Facility. On February 16, 2016, DEQ terminated A&R's coverage under the Permit.
 14. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
 15. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
 16. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
 17. The Department has issued coverage under no permits or certificates to A&R other than under VPDES Permit No. VAR05.
 18. Mains Creek is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
 19. Based on the results of the May 20, 2015 inspection, subsequent records review and the August 31, 2015 meeting, the Board concludes that A&R has violated Part I.A.5, Part II.C.2, Part III.F.2, Part III.B.4.b(6), Part III.B.5, Part III.D.2 and Part III.E.3 of the Permit, as described in paragraphs C(4) through C(10), above.
 20. A&R has submitted documentation that verifies that the violations described in paragraphs C(4) and C(10), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders A&R, and A&R agrees to pay a civil charge of \$13,845.00 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, 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

A&R shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, A&R shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of A&R, for good cause shown by A&R, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified 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; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order only, A&R admits the jurisdictional allegations but neither admits nor denies the findings of fact, and conclusions of law contained herein.
4. A&R 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. A&R 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 or A&R to modify, rewrite, amend, or enforce this Order.
6. Failure by A&R 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. A&R 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 unforeseeable circumstance beyond its control and not

due to a lack of good faith or diligence on its part. A&R shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. A&R 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 in writing within three business days, of learning of any condition above, which A&R intends to assert will result in the impossibility of compliance, may 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 A&R. Nevertheless, A&R 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. The Director or his designee terminates the Order after A&R has completed all of the requirements of the Order;
 - b. A&R 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
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to A&R.

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

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

13. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

14. By its signature below, A&R voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 19 day of May, 2016.



Regional Director
Department of Environmental Quality

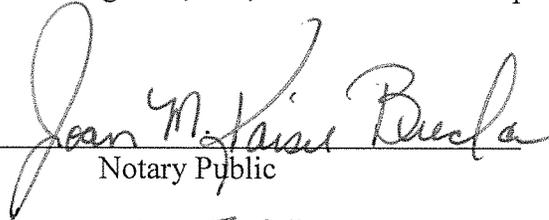
A&R Logistics, Inc. voluntarily agrees to the issuance of this Order.

Date: 3-15-2016 By: 

A&R Logistics, Inc.

Commonwealth of Virginia
City/County of Jefferson

The foregoing document was signed and acknowledged before me this 15 day of March, 2016, by Michael E. Fulmer who is SVP Legal & Risk Management of A&R Logistics, Inc., on behalf of the corporation.


Notary Public

503732
Registration No.

My commission expires: 01/15/2018

Notary seal: