



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Maria R. Nold
Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BAYSHORE CONCRETE PRODUCTS CORPORATION
FOR
BAYSHORE CONCRETE PRODUCTS CORPORATION'S
Cape Charles Facility
Unpermitted Facility**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and BAYSHORE CONCRETE PRODUCTS CORPORATION, regarding the Cape Charles Facility, for the purpose of resolving violations of the Virginia Waste Management Act regulations.

SECTION B: Definitions

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

1. "Bayshore Concrete" means BAYSHORE CONCRETE PRODUCTS CORPORATION, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Bayshore Concrete is a "person" within the meaning of Va. Code § 10.1-1400.
2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
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, as described in Va. Code § 10.1-1185.
5. "Facility" means BAYSHORE CONCRETE PRODUCTS CORPORATION's Cape Charles facility, located 1134 Bayshore Road in Cape Charles, Virginia, which is owned and operated by BAYSHORE CONCRETE PRODUCTS CORPORATION.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
8. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
9. "Report" means the Site Delineation Report dated December 2016 and received by DEQ on December 14, 2016.
10. "TRO" means the Tidewater Regional Office of DEQ located in Virginia Beach, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. Bayshore Concrete owns and operates a concrete products facility located at 1134 Bayshore Road in Cape Charles, Virginia.
2. On June 17, 2016, Bayshore Concrete representatives called DEQ to report that coal combustion byproducts (fly ash) had been buried at the Facility in 2012. According to information DEQ received from Bayshore Concrete and a site visit on August 10, 2016, approximately 50 tons of coal combustion fly ash was buried at the Facility on April 29, 2012 following a lightning strike that caused a conveyor to overfill a storage bin.
3. A review of DEQ files indicated that Bayshore Concrete did not have a permit to operate a solid waste management facility under permit-by-rule or in accordance with the VSWMR and Va. Code for the storage, treatment, or disposal of solid waste.

4. By letter dated August 22, 2016, Bayshore Concrete representatives informed DEQ that Bayshore Concrete had partially excavated the area where fly ash had been buried. Some of the fly ash has been removed from the property and some still remains on the property.
5. 9 VAC 20-81-40 and Va. Code § 10.1-1408.1.A state that no person shall operate a sanitary landfill or other facility for the disposal, treatment, or storage of solid waste without a permit.
6. On September 27, 2016, based on the June 17, 2016 telephone call, the August 10, 2016 site visit, and the Bayshore Concrete letter dated August 22, 2016, the Department issued Notice of Violation No. TR16-0926 (IR 2017-T-0486) to Bayshore Concrete for the violations described in paragraphs C(2) through C(5), above.
7. Based on the results of June 17, 2016 telephone call, the August 10, 2016 site visit, and the Bayshore Concrete letter dated August 22, 2016, the Board concludes that Bayshore Concrete has violated 9 VAC 20-81-40 and Va. Code § 10.1-1408.1.A, as described in paragraphs C(2) through C(5), above.
8. On December 14, 2016, Bayshore Concrete submitted to DEQ the Report delineating the boundaries of the fly ash material.
9. In order for Bayshore Concrete to return to compliance, DEQ staff and representatives of Bayshore Concrete have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Bayshore Concrete, and Bayshore Concrete agrees to:

- a. Perform the actions described in Appendix A of this Order; and
- b. Pay a civil charge of \$16,929 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

Bayshore Concrete shall include its Federal Employer Identification Number (FEIN) 54-0684049 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, Bayshore Concrete shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Bayshore Concrete for good cause shown by Bayshore Concrete, 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 and in NOV No. TR16-0926 (IR 2017-T-0486) dated September 27, 2016. 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 purposes of this Order and subsequent actions with respect to this Order only, Bayshore Concrete admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law contained herein.
4. Bayshore Concrete 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. Bayshore Concrete declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act 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 Bayshore Concrete 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. Bayshore Concrete 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 circumstances beyond its control and not due to a lack of good faith or diligence on its part. Bayshore Concrete shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence

on its part. Bayshore Concrete 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 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 and any 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 Bayshore Concrete. Nevertheless, Bayshore Concrete 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 Bayshore Concrete has completed all of the requirements of the Order;
 - b. Bayshore Concrete 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 Bayshore Concrete.

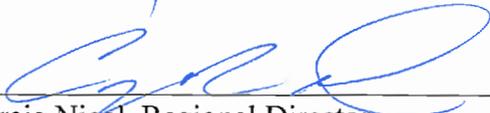
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Bayshore Concrete from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Bayshore Concrete 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 Bayshore Concrete 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 Bayshore Concrete to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Bayshore Concrete.
14. 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.
15. By its signature below, Bayshore Concrete voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3rd day of February, 2017.



Craig Nicol, Regional Director
Department of Environmental Quality

BAYSHORE CONCRETE PRODUCTS CORPORATION voluntarily agrees to the issuance of this Order.

Date: 12/22/16 By: Matthew, VP/GENERAL MANAGER
(Person) (Title)
BAYSHORE CONCRETE PRODUCTS CORPORATION

Commonwealth of Virginia
City/County of Northampton

The foregoing document was signed and acknowledged before me this 2nd day of December, 2016, by Matthew Dwyton who is VP/General Manager of BAYSHORE CONCRETE PRODUCTS CORPORATION, on behalf of the corporation.



Notary Public

7141337

Registration No.

ONNIE MAE DAVIS
NOTARY PUBLIC #7141337
Commonwealth of Virginia
Northampton County, Virginia
My Commission Expires Dec. 31, 2019

My commission expires: December 31, 2019

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

Bayshore Concrete shall:

1. Corrective Action Plan

Within 30 days from the effective date of this Order, submit to DEQ for review and approval a Corrective Action Plan (“CAP”) to:

- a. Provide a schedule to excavate and properly dispose of the remaining fly ash material identified in the Report;
- b. Place clean fill as needed in the excavated areas;
- c. Provide receipts of proper disposal;
- d. Extend the existing concrete pad to cap the areas where fly ash material was removed as identified in the Report.

2. Contact

Unless otherwise specified in this Order, Bayshore Concrete shall submit all requirements of Appendix A of this Order to:

Regional Director
VA DEQ – Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, Virginia 23462