



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2009
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Craig R. Nicol
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Coastal Precast Systems, LLC
FOR
Coastal Precast Systems
VPDES Permit No. VA0089818**

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 Coastal Precast Systems, LLC, regarding the Coastal Precast Systems Facility, 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. "BMP" means best management practices.
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. “CPS” means Coastal Precast Systems, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. CPS is a “person” within the meaning of Va. Code § 62.1-44.3.
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. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
8. “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.
9. “DMR” means Discharge Monitoring Report.
10. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
11. “Facility” means Coastal Precast Systems located at 1320 Yacht Drive in Chesapeake, Virginia, which owns and operates a concrete products manufacturing and storage facility.
12. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. “O&M” means operations and maintenance.
14. “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.
15. “Permit” means VPDES Permit No. VA0089818, which was issued under the State Water Control Law and the Regulation to CPS on September 1, 2014 and which expires on August 31, 2019.
16. “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.

17. "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.
18. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "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.
21. "SWPPP" means Stormwater Pollution Prevention Plan.
22. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VAC" means the Virginia Administrative Code.
25. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. CPS owns and operates the Facility located at 1320 Yacht Drive in Chesapeake, Virginia, which discharges stormwater associated with industrial activity.
2. The Permit allows CPS to discharge stormwater associated with industrial activity from the Facility, to the Southern Branch of the Elizabeth River, in strict compliance with the terms and conditions of the Permit.

3. The Southern Branch of the Elizabeth River is located in the James River Basin (Lower). The Elizabeth River is listed in DEQ's 305(b) report as impaired for fish consumption and aquatic life uses. Industrial point source discharges are listed among the potential sources of the impairment.
4. Part I.A.1 of the Permit authorizes CPS to discharge from Outfall 001 and 002 stormwater runoff associated with industrial activities.
5. Part I.A.2 of the Permit prohibits the discharge of process wastewater from Outfalls 001 and 002.
6. In submitting its DMRs, as required by the Permit, CPS has indicated that it exceeded discharge limits contained in Part I.A.1 of the Permit, for total suspended solids (TSS) and pH, for the March, April through June, July, and December 2016 reporting periods.
7. During a DEQ Facility inspection on February 25, 2016, DEQ staff documented the following compliance deficiencies with respect to CPS discharging wastewater from two unpermitted locations, in violation of Part I.A.2 of the Permit:
 - a. Wastewater was overflowing from the batch plant settling basins to a concrete swale, and then discharging to the stormwater pond associated with Outfall 001; and
 - b. Wash wastewater from washing trucks on the roadway in the middle of the Facility was draining to a drop inlet associated with Outfall 002.
8. CPS violated condition Part I.A.1 and I.A.2 of the Permit as noted in paragraphs C(6) and C(7) of this Order.
9. CPS is required to develop and implement an O&M manual according to requirements outlined in Part I.B.2 of the Permit.
10. Part I.B.2.a.(1)-(8) of the Permit provides that the O&M manual must include, among other items, methods for estimating process wastewater flows and testing requirements and procedures to mitigate pollutant discharges from the Facility's operations and ensure compliance with the Permit.
11. Part I.B.2.b of the Permit requires that CPS operate treatment works in accordance with the O&M manual, review and update the O&M manual annually, and sign and certify the O&M manual in accordance with Part II.K of the Permit.
12. Part I.B.6 of the Permit requires that CPS handle and store product, materials, and industrial wastes so as not to permit the discharge of such product, materials, and industrial wastes, except as expressly authorized by the Permit.

13. Part I.B.7.a of the Permit requires that CPS maintain a minimum freeboard of one foot in the settling basins and conduct daily inspections to ensure compliance while the Facility is in operation.
14. Part I.B.7.b of the Permit requires that CPS manage within a designated area any waste concrete and dredged solids from settling basins, including wastewater commingled with stormwater, and collect and treat it prior to recycle and reuse.
15. During a DEQ Facility inspection on February 25, 2016, DEQ staff documented the following compliance deficiencies with respect to the O&M manual requirements of the Permit, including the following:
 - a. CPS did not include in the O&M manual all of the items specified in the Permit, such as methods for estimating process wastewater or testing requirements and procedures for sampling Outfall 001, as required by Part I.B.2.a.(1)-(8);
 - b. CPS was not operating the treatment works at the batch plant in accordance with the O&M manual, as required by Part I.B.2.b of the Permit:
 - i. Equipment wash waters were running into settling basin two rather than settling basin one;
 - ii. Cementitious materials were being deposited in the stormwater pond associated with Outfall 001;
 - iii. Wastewater was overflowing from the basins due to continuous equipment washing;
 - iv. A new settling basin was directly connected to Outfall 001's stormwater pond, which should be receiving stormwater only and not process wastewaters; and
 - v. The O&M manual stated that CPS had moved the waste concrete storage area to the batch plant, but no storage area was observed.
 - c. CPS had not reviewed, and updated the O&M manual for 2014, as required by Part I.B.2.b of the Permit.
16. During the DEQ Facility inspection on February 25, 2016, DEQ staff documented the following compliance deficiencies with respect to the BMP and operations controls, as required by Part I.B.7 of the Permit, including the following:
 - a. CPS could not provide upon request freeboard inspection logs documenting daily inspections of the basins and ponds, as required by Part I.B.7.a of the Permit; and

28. Part I.C.8.b.(6)(e)vi of the Permit requires that CPS implement a stormwater employee training program for the Facility, and include in the SWPPP a training schedule, documentation of training sessions, and employees who attended.
29. During the DEQ Facility inspection on February 25, 2016, DEQ staff documented compliance deficiencies with respect to SWPPP requirements of the Permit, including the following:
 - a. CPS personnel noted fuel spills, the need to clean the roadways twice daily, and numerous other housekeeping issues, but CPS had not reviewed and amended the SWPPP to address these deficiencies, as required by Part I.C.8.b.(3) of the Permit. CPS also did not document any corrective actions that it had taken to demonstrate that these issues were corrected, as required by Part I.C.8.b.(4) of the Permit;
 - b. CPS did not identify in the SWPPP pollution prevention team members who are currently employed with the company, the correct company name, and appropriate information in the appendices, as required by Part I.C.8. b.(6)(a) of the Permit;
 - c. CPS did not keep clean all exposed areas of the Facility that are potential sources of pollutants in stormwater, as required by Part I.C.8.b.(6)(e)ii of the Permit;
 - d. CPS did not have records of a routine Facility inspection for the first quarter of the 2015 reporting period, as required by Part I.C.8.b.(6)(e)v of the Permit;
 - e. CPS failed to conduct at least one quarterly routine facility inspection during a rain event for the second, third, and fourth quarters of the 2015 reporting period, as required by Part I.C.8.b.(6)(e)v of the Permit;
 - f. CPS had not implemented a stormwater employee training program for the Facility, and the SWPPP did not include a training schedule, documentation of training sessions, and employees who attended, as required by Part I.C.8.b.(6)(e)vi of the Permit.
30. CPS has violated conditions Part I.C.8.b.(3), Part I.C.8.b.(4), Part I.C.8.b.(6)(a), Part I.C.8.b.(6)(e)ii, Part I.C.8.b.(6)(e)v, and Part I.C.8.b.(6)(e)vi of the Permit as noted in paragraph C(29) of this Order.
31. Part II.C.1 of the Permit requires that CPS submit monitoring reports no later than the 10th day of the month after monitoring takes place.
32. Part II.I of the Permit requires that CPS report instances of non-compliance orally within 24 hours and written within five days.
33. In submitting its DMRs, CPS reported monitoring violations for the January through December 2015, and January through August 2016 reporting periods. CPS also failed to

provide letters of explanation for non-compliance with Permit effluent limits for the March and July 2016 reporting periods. CPS responded to the DEQ February 2016 site inspection by letter dated April 28, 2016 indicating that it had started using e-DMR to address DMR reporting violations. In addition, CPS indicated that it had conducted SWPPP employee training, and improved and repaired the yard to prevent wastewater discharges.

34. CPS has violated conditions Part II.C.1 and Part II.I of the Permit as noted in paragraph C(33) of this Order.
35. Va. Code § 62.1-44.31 states that any owner must comply with an Order by the Board.
36. CPS has been subject to a prior consent order addressing violations of the Permit. DEQ entered into a Special Order by Consent with CPS, effective June 25, 2012, which required that CPS:
 - a. Reduce the amount of pollutants entering the drop inlets associated with Outfall 002;
 - b. Prevent process wastewater and contaminated stormwater from entering the stormwater retention pond associated with Outfall 001;
 - c. Ensure complete and accurate DMRs;
 - d. Improve CPS's responsiveness in explaining the causes of and actions taken in response to Permit violations reported on DMRs; and
 - e. Comply with conditions of the Permit.
37. CPS has violated Va. Code § 62.1-44.31 as noted in paragraph C(36) of this Order.
38. TRO issued NOV's for the TSS and pH exceedances, DMR reporting violations, violations observed during the February 2016 site inspection, and failure to comply with a prior Order by the Board as follows: NOV No. W2016-02-T-0003, issued February 10, 2015; NOV W2016-05-T-0001, issued May 11, 2016; and NOV No. W2016-10-T-0002, issued October 6, 2016.
39. 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."
40. The Regulation, at 9 VAC 25-31-50 and 9 VAC 25-151-70, 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.
41. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

42. The Department has issued no permits or certificates to CPS other than VPDES Permit No. VA0089818.
43. The Elizabeth River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
44. Based on the results of February 25, 2016 inspection and documentation submitted for the November 2015 through August 2016 reporting periods, the Board concludes that CPS has violated the Permit, Va. Code §§ 62.1-44.31, 44.5, 9 VAC 9 VAC 25-31-50 and 9 VAC 25-151-70, by discharging wastewater from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(6), C(7), C(15), C(16), C(19), C(29), C(33), and C(36), above.
45. On February 17, 2016, CPS met with DEQ to discuss corrective actions that it has taken to address the compliance deficiencies cited in this Order. In response to this enforcement action, CPS has taken the following initiatives:
 - a. Installed silt fencing to reduce the amount of TSS discharging into Outfall 001;
 - b. Drafted plans to pave an area contributing to TSS contamination in Outfall 002;
 - c. Identified potential deficiencies in the contract laboratory’s sampling techniques that may be resulting in TSS Permit limit exceedances that are unrepresentative of the stormwater discharges leaving the Facility from Outfall 002;
 - d. Updated and submitted the O&M manual, which was revised in May 2016;
 - e. Operated the batch plant in accordance with the O&M manual (e.g. CPS repaired the batch plant wall to prevent wastewaters from running into settling basin two instead of settling basin one and cleaned out cementitious materials from the batch plant area to improve capacity);
 - f. Performed and documented freeboard inspection logs to document freeboard at its batch plant settling basins;
 - g. Performed and documented visual examination of stormwater discharges for Outfalls 002 and 003;
 - h. Updated the Facility SWPPP in March 2016 to identify pollution prevention team members, implement a stormwater training program, and include a training scheduled and documentation of training sessions and employees who attended; and
 - i. Ensured complete and accurate DMRs by using e-DMR to prevent monitoring and reporting violations.

46. In order for CPS to return to compliance, DEQ staff and representatives of CPS 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 §§ 62.1-44.15, the Board orders CPS, and CPS agrees to:

1. Perform the actions described in Appendix A of this Order.
2. Pay a civil charge of \$30,388 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

| <u>Payment Due Date</u> | <u>Payment Amount</u> |
|-------------------------|-----------------------|
| May 31, 2017 | \$5,388 |
| June 30, 2017 | \$5,000 |
| July 31, 2017 | \$5,000 |
| August 31, 2017 | \$5,000 |
| September 30, 2017 | \$5,000 |
| October 31, 2017 | \$5,000 |

3. If the Department fails to receive a civil charge payment pursuant to the schedule described in the above paragraph D.2, the payment shall be deemed late. If any payment is late, the Department shall have the right to demand in writing full payment of the entire remaining balance under this Order by CPS. CPS shall pay the entire remaining balance within 15 days of the receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.
4. 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

5. CPS 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, CPS shall be liable for attorneys' fees of 30% of the amount outstanding.

6. Both the Board and CPS understand and agree that this Order supersedes and terminates the Consent Order issued by the Board to CPS on June 25, 2012.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of CPS for good cause shown by CPS, 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. W2016-02-T-0003, dated February 10, 2015; NOV No. W2016-05-T-0001, dated May 11, 2016; and NOV No. W2016-10-T-0002, dated October 6, 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, CPS admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. CPS 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. CPS 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 CPS 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. CPS 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. CPS shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CPS 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 CPS. Nevertheless, CPS 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 CPS has completed all of the requirements of the Order;
 - b. CPS 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 CPS.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CPS 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 CPS 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 CPS 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 CPS to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of CPS.
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, CPS voluntarily agrees to the issuance of this Order.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

And it is so ORDERED this 14th day of March, 2017.

[Signature] 5/9/17
Craig R. Nicol, Regional Director
Department of Environmental Quality

Coastal Precast Systems, LLC voluntarily agrees to the issuance of this Order.

Date: 3/14/17 By: [Signature], Pres.
(Person) (Title)
Coastal Precast Systems, LLC

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 14th day of march, 2017, by Paul F. Ogordchock who is president of Coastal Precast Systems, LLC, on behalf of the company.

[Signature]
Notary Public

7515836
Registration No.

My commission expires: 03/31/2020

Notary seal:



03/31/20

APPENDIX A SCHEDULE OF COMPLIANCE

1. Corrective Actions

- a. CPS shall as soon as possible, but in no event later than May 1, 2017, cease the discharge of waste and wash waters from the Facility to the Southern Branch of the Elizabeth River.
- b. No later than May 1, 2017, CPS shall provide to DEQ documentation of:
 - i) Daily freeboard inspection logs;
 - ii) Visual examination of stormwater discharge from Outfalls 002 and 003; and
 - iii) Routine Facility inspections.
- c. No later than June 1, 2017, CPS shall submit to DEQ for review and approval a correction action plan (“CAP”) and schedule to:
 - i) Install weirs in Outfall 001’s stormwater pond to address TSS Permit limit exceedances from Outfall 001;
 - ii) Pave the area surrounding Outfall 002 to address TSS Permit limit exceedances from Outfall 002;
 - iii) Prevent process wastewater and contaminated stormwater from entering the stormwater retention pond associated with Outfall 001; and
 - iv) Implement an environmental management system that identifies Facility operations (e.g. batch plant, material storage, and fueling areas), documents monthly compliance checklists for each area, and creates a routine schedule to address compliance deficiencies.
- d. CPS shall submit a final report documenting completion of the CAP, in accordance with the CAP, and containing the results of the above referenced evaluation, to DEQ by January 1, 2019, for its review and approval.

2. DEQ Contact

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

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