



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Oldcastle Infrastructure, Inc.
FOR
Oldcastle Infrastructure
VPDES Permit No. VAG11
Registration No. VAG110107**

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 Oldcastle Infrastructure, Inc., regarding the Oldcastle Infrastructure 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. "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, as described in Va. Code § 10.1-1185.
5. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10.
6. “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.
7. “DMR” means Discharge Monitoring Report.
8. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. “Facility” or “Plant” means the Oldcastle Infrastructure concrete manufacturing facility, formerly known as Oldcastle Precast, located at 5115 Massaponax Church Road, Fredericksburg, Virginia, from which discharges of stormwater associated with industrial activities occurs.
10. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. “NRO” means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. “O&M” means operations and maintenance.
13. “Oldcastle” means Oldcastle Infrastructure, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Oldcastle is a “person” within the meaning of Va. Code § 62.1-44.3.
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. VAG11, the VPDES General Permit for Concrete Products Facilities, which was issued under the State Water Control Law and the Regulation on January 1, 2019 and which expires on December 31, 2023. Oldcastle

applied for coverage under General Permit No. VAG11 for the Facility, and was issued Registration No. VAG110107 on January 1, 2019.

16. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
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; 9 VAC 25-210-10.
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. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Oldcastle owns and operates the Facility. The Permit allows Oldcastle to discharge stormwater associated with industrial activities from the Facility, to an unnamed tributary of Massaponax Creek, in strict compliance with the terms and conditions of the Permit.

2. The unnamed tributary of Massaponax Creek is located in the Rappahannock River Basin, and has been neither monitored nor assessed. Based on DEQ's 2018 305(b) report, approximately 1.8 miles downstream from this Facility, another unnamed tributary to Massaponax Creek is noted to have an observed effect for the aquatic life use based on previous citizen benthic macroinvertebrate monitoring. Approximately 2.1 miles downstream, another unnamed tributary to Massaponax Creek is impaired for the aquatic life use based on pH monitoring. Discharges from the Facility have the potential to contribute to these various downstream surface water impairments.
3. Parts I.A.2 and II.A.3 of the Permit require Oldcastle to conduct monitoring of storm water discharges from the Facility for the presence of pollutants of concern once during each annual monitoring period, and to record the monitoring results on a DMR.
4. Parts I.A., and III.C. of the Permit require Oldcastle to submit the results of the stormwater monitoring on a DMR to the Department by January 10 of each year.
5. On April 10, 2019, Oldcastle submitted annual DMRs for the January through December 2018 monitoring period. The DMRs were due for submission on January 10, 2019.
6. Oldcastle failed to collect discharge monitoring samples from the Facility's outfalls for the January through December 2018 annual monitoring period, and therefore was unable to submit annual DMRs for that monitoring period.
7. DEQ staff performed inspections of the Facility and a review of Facility records on May 16, 2019.
8. During the May 2019 Facility inspection, DEQ staff observed that quarterly visual monitoring had not been performed by Oldcastle during the first, third, and fourth quarters of 2017, all four quarters of 2018, and the first quarter of 2019.
9. Part II.C of the Permit requires that a quarterly visual examination of stormwater discharges from the Facility's outfalls be performed and documented. If no storm event resulted in runoff from the Facility during a monitoring quarter, visual monitoring for that quarter is excused, provided that it is documented in the Facility's SWPPP.
10. During the May 2019 Facility inspection, DEQ staff observed no quarterly routine facility inspections had been completed during all four quarters of 2018 and the first quarter of 2019.
11. Part II.F.6.f.(5) of the Permit requires that quarterly routine facility inspections be performed and documented by Facility personnel who possess the knowledge and skills to adequately perform such inspections.
12. During the 2019 Facility inspection, DEQ staff observed that Oldcastle did not perform an annual outfall evaluation for the presence of unauthorized discharges in 2016, 2017, or 2018.

13. Part II.F.8.(b) of the Permit requires that all Facility outfalls be evaluated annually for the presence of unauthorized discharges, and that documentation of such evaluations be maintained in the Facility's SWPPP.
14. During the May 2019 Facility inspection, DEQ staff observed that Oldcastle's SWPPP for the Facility was not adequately updated. The SWPPP needed to be updated to include a change in personnel, updates to the solids management and disposal plan, and to reflect the current outfalls and sampling requirements.
15. Part II.F.1. of the Permit requires Oldcastle to implement any necessary changes to the SWPPP within 60 days of being granted coverage under the Permit and/or within 60 days of a ownership change of the Facility.

Part II.F.3. of the Permit requires Oldcastle to maintain an updated SWPPP and specifies when and how the SWPPP should be reviewed and amended by Oldcastle as appropriate.

Part II.F.4. of the Permit also requires that Oldcastle make any necessary modifications to the SWPPP within 60 days of the date of discovery, observation, or event requiring a SWPPP modification.
16. During the May 2019 inspection, DEQ staff observed that the onsite basins were overgrown and in need of maintenance.
17. Permit Part III.Q states: "Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit."
18. During the May 2019 inspection, DEQ staff observed that that the O&M Manual was not signed and was missing information that is required by the Permit. Missing information included management and disposal procedures of process wastewater solids, testing requirements and procedures, recordkeeping and reporting requirements, and duties and roles of responsible officials.
19. Part I.B.8.a of the Permit requires Oldcastle to have developed/updated and implemented an O&M Manual for the Facility within 180 days of being granted coverage under the Permit, and explains the minimum required contents of the O&M Manual.

Part I.B.8.b. of the permit requires the O&M Manual for the Facility to be signed by Oldcastle, and requires that Oldcastle perform a review and update of the O&M Manual at least annually.

20. During the May 2019 inspection, DEQ staff observed the water from the spoils dewatering activity to be flowing into the adjacent stormwater basin.
21. Part I.A.1. of the Permit states that the discharge of process wastewater from the Facility is not applicable under the Permit.

Parts I.B.2 and II.D of the Permit provide lists of allowable non-stormwater discharges that Oldcastle is allowed to discharge under the Permit, and those lists do not include the type of discharge that DEQ observed Oldcastle to be discharging at the time of the inspection.

Additionally, 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.”

The Regulation, at 9 VAC 25-31-50, 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.

22. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
23. The Department has issued no permits or certificates to Oldcastle for the Facility other than VPDES Permit Registration No. VAG110107.
24. The unnamed tributary of Massaponax Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
25. NRO issued one Warning Letter and two Notices of Violation to Oldcastle for the violations described above in paragraphs C(1) through C(24) as follows:
 - a. WL No. W2018-02-N-1009 dated February 13, 2018;
 - b. Referral NOV No. W2019-02-N-0012 dated February 27, 2019; and
 - c. NOV No. W2019-09-N-0002 dated September 25, 2019.
26. In email correspondence responding to the second NOV, Oldcastle stated it had submitted a written response to DEQ’s inspection report on August 14, 2019, which included Oldcastle’s plan and schedule for corrective actions to address the NOV. On November 14, 2019, DEQ staff met with representatives of Oldcastle to discuss the NOVs and Oldcastle’s plan to return to compliance.

27. Regarding the unpermitted discharge, Oldcastle explained that it had installed a containment berm around the dewatering spoils pile and that the process water discharge through the stormwater outfalls had ceased.
28. To address the DMR submission issues, Oldcastle submitted [early] its annual DMR for the January through December 2019 monitoring period on November 12, 2019. The DMR was due to DEQ by January 10, 2020.
29. To comply with the Permit moving forward, Oldcastle completed process and staff changes at the Facility, which included the implementation of a new internal notification system to assist with the scheduling/performance of Permit compliance tasks and meeting submission deadlines.
30. Based on DEQ observations during the May 29, 2019 inspection, the August 14, 2019 inspection report response from Oldcastle, DEQ's review of submitted files, and correspondence between DEQ and representatives of Oldcastle concerning the WL, NOVs, and inspection, the Board concludes that Oldcastle has violated Parts I.A.2., II.A.3., I.A., III.C., II.C., II.F.6.f.(5), II.F.8.(b), II.F.1., II.F.3., II.F.4. III.Q., I.B.8.a., I.B.8.b., III.B.4.b.(1), III.B.4.b.(6), III.B.5., III.E., IV.B.2.a., and IV.B.2.d. of the Permit and 9 VAC 25-31-50, by discharging process wastewater from the Facility and by discharging stormwater associated with industrial activity from the Facility while concurrently failing to comply with the conditions of the Permit, as described above in paragraphs C(1) through C(29).
31. On December 19, 2019, Oldcastle submitted documentation to address the outstanding violations, including an updated/revised O&M Manual for the Facility, an updated/revised SWPPP for the Facility, quarterly SWPPP inspection reports for 2019, and the 2019 annual outfall evaluation for the presence of unauthorized discharges.

Oldcastle has demonstrated satisfactory completion of corrective actions to address the items cited in the NOVs.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Oldcastle, and Oldcastle agrees to pay a civil charge of **\$10,185** 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

Oldcastle 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, Oldcastle 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 Oldcastle for good cause shown by Oldcastle, 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. W2019-09-N-0002 dated September 25, 2019, NOV No. W2019-02-N-0012 dated February 27, 2019, and WL No. W2018-02-N-1009 dated February 13, 2018. 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, Oldcastle admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Oldcastle 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. Oldcastle 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 Oldcastle 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. Oldcastle 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. Oldcastle shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Oldcastle 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 Oldcastle. Nevertheless, Oldcastle 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 Oldcastle has completed all of the requirements of the Order;
 - b. Oldcastle 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 Oldcastle.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Oldcastle 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 Oldcastle 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 Oldcastle certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Oldcastle to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Oldcastle.
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, Oldcastle voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 13th day of July, 2020.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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Oldcastle Infrastructure, Inc. voluntarily agrees to the issuance of this Order.

Date: 04/30/2020 By: JM (Justin Meador), Area EHS Manager
(Person) (Title)
Oldcastle Infrastructure, Inc.

Commonwealth of Virginia
City/County of Spotsylvania

The foregoing document was signed and acknowledged before me this 30th day of April, 2020, by Justin Meador who is Area EHS manager of Oldcastle Infrastructure, Inc., on behalf of the corporation.

Jennifer Hamlett
Notary Public

7800989
Registration No.

My commission expires: 10/31/2022

Notary seal:

