



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Molly Joseph Ward
Secretary of Natural Resources

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Director

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION – ORDER BY CONSENT
ISSUED TO
RAPPAHANNOCK CONCRETE CORP.
FOR
RAPPAHANNOCK CONCRETE – SALUDA, VIRGINIA
VPDES Concrete Products Permit No. VAG1101
Registration Number VAG110191**

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 Rappahannock Concrete Corp., regarding the Rappahannock Concrete – Saluda Plant, located at 15128 George Washington Memorial Highway, Saluda, Virginia, for the purpose of resolving certain violations of the State Water Control Law, the applicable regulation, and the above-referenced Permit.

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. “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 the discharge of a pollutant.
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. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. “Facility” or “Site” means Rappahannock Concrete – Saluda located at 15128 George Washington Memorial Highway, Saluda, Virginia, from which discharges of stormwater associated with industrial activity occur. Rappahannock applied for registration under the Permit and was issued registration No. VAG110191.
11. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. “O&M” means operations and maintenance.
13. “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.
14. “Permit” means General VPDES Permit No. VAG11 for the discharge of process waste water and storm water associated with industrial activity from concrete products facilities, which was issued under the State Water Control Law and the Regulation on October 1, 2008, expired on September 30, 2013; and was re-issued on October 1, 2013 and will expire on September 30, 2018.
15. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

16. "Rappahannock" means Rappahannock Concrete Corp., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Rappahannock is a "person" with the meaning of Va. Code § 62.1-44.3.
17. "Registration Statement" means a registration statement for coverage under a storm water general permit.
18. "Regulation" means The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities. 9 VAC 25-193-10 *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. "SWP3" means Stormwater Pollution Prevention Plan.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Rappahannock owns and operates the Facility in Saluda, Virginia. Rappahannock produces concrete at the Facility.
2. The Permit allows Rappahannock to discharge process wastewater and stormwater associated with industrial activity at the Facility to an unnamed tributary (UT) to Dragon Swamp, in strict compliance with the terms and conditions of the Permit.
3. The UT to Dragon Swamp is located in the Chesapeake Bay and Small Coastal Basin. During the 2012 305(b)/303(d) and draft 2014 Integrated Water Quality Assessments, the UT to Dragon Swamp was not assessed for any designated use; it was therefore considered a Category 3A waterbody. In addition, the Chesapeake Bay TMDL, which was approved by the EPA on 12/29/2010, addresses dissolved oxygen and submerged aquatic vegetation (SAV) impairments in the Chesapeake Bay and its tidal tributaries by allocating total nitrogen, total phosphorus, and total suspended solids to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. All applicable, regulated industrial stormwater general permits were assigned aggregated wasteload allocations.

4. On March 22, 2012, DEQ staff conducted an inspection at the Facility and observed compliance deficiencies with respect to the requirements of the Permit issued on October 1, 2008. Many of the same compliance deficiencies were observed during a June 2007 DEQ staff inspection of the Facility. DEQ staff observed the following deficiencies during the March 22, 2012 inspection:
 - a. washdown water was flowing into the curbed rinse-off area, then directed toward the permitted stormwater outfall designates of 001;
 - b. the SWP3 could not be provided to the inspector for review;
 - c. the site map submitted with the permit application appeared incomplete in that outfalls and sampling points were not properly identified;
 - d. records of quarterly visual examinations of stormwater discharges associated with industrial activities at this site could not be provided to the inspector;
 - e. records of quarterly routine site inspections could not be provided to the inspector;
 - f. records of daily freeboard measurements could not be provided to the inspector;
 - g. suspect petroleum-based stains were observed on soils, gravel and concrete onsite;
 - h. the annual DMR submitted for the 2011 monitoring period for Outfall 002 that was due by January 10, 2012, was received on February 28, 2012. The sampling data for the 2011 monitoring period, was reported to have been collected on February 2, 2012.
5. Part I.B.4 of the Permit states that all washdown and washout of trucks, mixers, transport buckets, forms or other equipment shall be conducted within designated washdown and washout areas. All washout/washdown water shall be collected for recycle or treated prior to discharge.
6. Part II.G of the Permit states that a stormwater pollution prevention plan is required to be developed for the Facility; and Part II.G.1 and .2 state that the plan shall be retained on-site and made available to the department upon request.
7. Part II.G.4(1) of the Permit states in part that the site “map must indicate the outfall locations and the types of discharges contained in the drainage areas of the outfalls...”
8. Part II.D of the Permit states “The permittee shall perform and document a visual examination of a stormwater discharge associated with industrial activity from each outfall”, except exempt discharges as described in the Permit. The visual examinations(s) must be made during daylight hours at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December. Part II.D.2 states in part that “the visual examination reports must be maintained onsite with the pollution prevention plan.”

9. Part II.G.4.c(4) states in part that Facility personnel who are familiar with the industrial activity, the BMPs and the stormwater pollution prevention plan shall be identified to inspect designated equipment and areas of the Facility, and inspections shall be conducted while the Facility is in operation. The inspection frequency shall be specified in the plan based upon a consideration of the level of industrial activity at the Facility, but it shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit. Records of inspections shall be maintained with the SWP3.
10. Part I.B.10 of the Permit states in part that the permittee shall ensure that all basins and lagoons maintain a minimum freeboard of one foot at all times except during a 72-hour transition period after a measurable rainfall event. In order to demonstrate compliance, the permittee shall conduct daily inspections while the facility is in operation and maintain an inspection log. The log shall be kept onsite and be made available to the Department upon request.
11. Part I.B.3 of the Permit states "Vehicles and equipment utilized during the industrial activity on site must be operated and maintained in such a manner as to minimize the potential or actual point source pollution of surface waters. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or ground waters or the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up to the maximum extent practicable and disposed of in a manner so as not to allow their entry into the surface or ground waters of the state."
12. Part I.A.I of the Permit requires a minimum monitoring frequency of once per year for each of the analytical parameters listed in Part I.A of the Permit; and Part I.A.5 of the Permit states "Reports of annual monitoring shall be submitted to the DEQ regional office no later than the 10th day of January of each year." Part III.C states that the permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office. Monitoring results shall be reported on a DMR or on forms provided, approved, or specified by the Department.
13. On May 17, 2012, DEQ issued NOV No. W2012-05-P-0001 to Rappahannock for the violations as described above.
14. On February 5, 2015, DEQ issued NOV No. W2015-02-P-0001 to Rappahannock for failure to submit the Outfall 001 annual DMR for the 2014 monitoring period, due at the DEQ-PRO by January 10, 2015.
15. Part I.A.I of the Permit requires a minimum monitoring frequency of once per year for each of the analytical parameters listed in Part I.A of the Permit; and Part I.A.5 of the

Permit states "Reports of annual monitoring shall be submitted to the DEQ regional office no later than the 10th day of January of each year." Part III.C of the Permit states that the permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office. Monitoring results shall be reported on a DMR or on forms provided, approved, or specified by the Department.

16. DEQ received Rappahannock's annual DMR for 2014 monitoring period, on March 9, 2015.
17. On October 8, 2015, DEQ staff conducted a compliance inspection at the Facility. DEQ staff inspected the Facility for compliance with the requirements of the Permit. DEQ staff observed the following during the inspection:
 - a. chute washout was being performed next to the waste concrete storage area. Pooled washout water and wet concrete were on the ground next to the waste concrete pile;
 - b. evidence of process wastewater draining from the solids drying area;
 - c. failure to provide documentation of all required quarterly visual examinations of stormwater discharges associated with industrial activity for the years of 2013, 2014 and 2015 (2 quarters in 2013, 3 quarters in 2014 and 1 quarter in 2015 missing);
 - d. failure to provide for review documentation of routine site inspections;
 - e. failure to provide for review documentation of annual comprehensive site compliance evaluations;
 - f. failure to update the O&M manual as required to address testing requirements and procedures, recordkeeping and reporting requirements and duties and roles of responsible officials; and
 - g. petroleum-based stains were observed onsite in the fueling area, parking lot, vicinity of the truck washout basins and truck scales.
18. Part I.B.4 of the Permit states "All washdown and washout of trucks, mixers, transport buckets, forms or other equipment shall be conducted within designated washdown and washout areas. All washdown and washout water shall be collected for recycle or collected and treated to meet the limits in Part I.A prior to discharge to the receiving stream."
19. Part I.B.5 of the Permit states "Any waste concrete and dredged solids from the settling basins shall be managed within a designated area, and any wastewaters including storm water generated from these activities shall be collected for recycle or treated prior to discharge."

20. Part II.D of the Permit states “The permittee shall perform and document a visual examination of a stormwater discharge associated with industrial activity from each outfall...at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December.”
21. Part II.G.6.f.(5) of the Permit states in part that Facility personnel who possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the Facility and who can also evaluate the effectiveness of BMPs shall regularly inspect designated equipment and areas of the Facility. Inspections shall be conducted while the Facility is in operation.... The inspection frequency shall be specified in the plan based on a consideration of the level of industrial activity at the Facility, but it shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit. Records of inspections shall be maintained with the SWP3.
22. Part II.G.8 of the Permit states “The permittee shall conduct comprehensive site compliance evaluations at least once a year. The evaluations shall be done by qualified personnel who possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility and who can also evaluate the effectiveness of BMPs.”
23. Part I.B.9 of the Permit requires that the permittee develop or review and update, as appropriate, an O&M Manual for the permitted Facility within 180 days after the date of coverage under the general permit. The O&M Manual shall include procedures and practices for the mitigation of pollutant discharges for the protection of state waters from the Facility’s operations and to ensure compliance with the requirements of the Permit and shall be reviewed and updated at least annually, and signed and certified in accordance with Part III K of the Permit. The manual shall address...(5) testing requirements and procedures; (6) recordkeeping and reporting requirements; and (7) duties and roles of responsible officials.
24. Part I.B.3 of the Permit states “Vehicles and equipment utilized during the industrial activity on site must be operated and maintained in such a manner as to minimize the potential or actual point source pollution of surface waters. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or ground waters or the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up to the maximum extent practicable and disposed of in a manner so as not to allow their entry into the surface or ground waters of the state.
25. On December 28, 2015, DEQ issued NOV No. W2015-12-P-0003 to Rappahannock for the violations as described above.

26. Va. Code § 62.1-44.5 states: “[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.”
27. 9 VAC 25-193-70 also states except in compliance with a VPDES permit, or another permit, issued by the Board, it shall be unlawful to discharge into state waters sewage, industrial wastes, or other wastes.
28. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
29. The Department has issued coverage under no permits or certificates to Rappahannock Concrete that allows a discharge to State Waters from the Facility other than VPDES Permit VAG11.
30. The unnamed tributary of Dragon Swamp is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
31. Based on the results of DEQ inspections on March 22, 2012, and October 8, 2015; NOVs issued on May 17, 2012, February 5, 2015, and December 28, 2015; and the meeting on January 26, 2016, the Board concludes that Rappahannock violated the Permit, State Water Control Law, and the Regulation as described above.
32. On January 26, 2016, Department staff met with representatives of Rappahannock to discuss the violations and Rappahannock’s written response to the NOV(s).
33. Rappahannock has submitted documentation to DEQ on October 19, 22, 28, 2015, December 28, 2015, and on May 25, 2016, that verifies that the violations as described above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted in Va. Code §§ 62.1-44.15, the Board orders Rappahannock and Rappahannock agrees to:

1. Pay a civil charge of \$ 6,604.00 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

Rappahannock shall include its Federal Employee 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, Rappahannock shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative

1. The Board may modify, rewrite, or amend this Order with the Consent of Rappahannock for good cause shown by Rappahannock, 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 purposes of this Order and subsequent actions with respect to this Order only, Rappahannock admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Rappahannock 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. Rappahannock 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 Rappahannock 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. Rappahannock 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. Rappahannock shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rappahannock 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 Rappahannock. Nevertheless, Rappahannock 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 Rappahannock has completed all of the requirements of the Order.
 - b. Rappahannock 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 Rappahannock.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rappahannock 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 Rappahannock and approved by the Department pursuant to this Order are incorporated into this Order. Any noncompliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Rappahannock 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 Rappahannock to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Rappahannock.
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, Rappahannock voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 13th day of July, 2017.



Jefferson Reynolds,
Director, Division of Enforcement
Department of Environmental Quality

Rappahannock Concrete Corp. voluntarily agrees to the issuance of this Order.

Date: 5/17/17 By: [Signature] Person
[Signature] Title
Rappahannock Concrete Corp.

Commonwealth of Virginia

City/County of Gloucester

The foregoing document was signed and acknowledged before me this 17th day of May, 2017, by J. Scott Finney who is President of Rappahannock Concrete Corp., on behalf of the corporation.

[Signature]
Notary Public

#139719
Registration No.

My commission expires: 1/31/2018

Notary Seal:

SUSAN C. FRAZIER
NOTARY PUBLIC
REG. #139719
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES JANUARY 31, 2018