



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### NORTHERN REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director  
Thomas A. Faha  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
COMMONWEALTH RECYCLED AGGREGATES, INC.  
FOR  
COMMONWEALTH RECYCLED AGGREGATES, INC.'S  
BRISTOW FACILITY**

### **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 Commonwealth Recycled Aggregates, Inc., regarding the Commonwealth Recycled Aggregates Prince William County 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. "Commonwealth Aggregates" means Commonwealth Recycled Aggregates, Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners,

and subsidiaries. Commonwealth Aggregates is a “person” within the meaning of Va. Code § 62.1-44.3.

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. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. “Facility” means the Commonwealth Recycled Aggregates, Inc. Facility located at 7800 Piney Branch Road in Bristow, Virginia, which discharges industrial stormwater.
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. “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.
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 VPDES Permit Regulation, 9 VAC 25-31-10 *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. “Va. Code” means the Code of Virginia (1950), as amended.
19. “VAC” means the Virginia Administrative Code.
20. “VPDES” means Virginia Pollutant Discharge Elimination System.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Commonwealth Aggregates owns and operates the Facility which discharges industrial stormwater to an unnamed tributary of Broad Run.
2. A DEQ ambient monitoring station is located approximately 1.7 miles upstream from the confluence of Broad Run with the unnamed tributary. The following is the water quality summary for this segment of Broad Run, as taken from the 2014 Integrated Report: *E. coli* monitoring finds a bacteria impairment, resulting in an impaired classification for the recreation use. A bacteria TMDL for the Broad Run watershed has been completed and approved. The aquatic life and wildlife uses are considered fully supporting. The fish consumption use was not assessed.
3. In a letter dated September 18, 2015, Commonwealth Aggregates was notified by DEQ that it needed to apply for an individual permit. A permit application was submitted by Commonwealth Aggregates on March 23, 2016, however the permit fee was not submitted. The fee was received on April 29, 2016, after DEQ notified Commonwealth Aggregates via email that the fee was needed. DEQ staff completed a full review of the permit application and notified Commonwealth Aggregates by letter dated May 23, 2016, that the application was incomplete. A revised application was received by DEQ on November 3, 2016. The revised application did not include the required Local

Government Ordinance Form (LGOF) due to unforeseen and unexpected delays in obtaining the LGOF from Prince William County. The LGOF was submitted to DEQ on February 22, 2017.

4. On December 1, 2016, DEQ staff conducted a site visit of the Facility. DEQ staff observed a discharge from the Facility's Outfall.
5. On January 19, 2017, DEQ issued NOV No. W2017-01-N-001 to Commonwealth Aggregates.
6. 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."
7. 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.
8. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
9. The unnamed tributary of Broad Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
10. Based on the results of the December 1, 2016 site visit, and documentation submitted to DEQ on November 3, 2016, the Board concludes that Commonwealth Aggregates has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50 by discharging industrial stormwater from the Facility without a permit, as described in paragraph C(3) through C(9) above.
11. VPDES Permit No.VA0092932 was issued to Commonwealth Aggregates and became effective on July 1, 2017.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Commonwealth Recycled Aggregates, Inc. and Commonwealth Recycled Aggregates, Inc. agrees to pay a civil charge of \$2,943.00 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

Commonwealth Recycled Aggregates, Inc. 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, Commonwealth Recycled Aggregates, Inc. 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 Commonwealth Recycled Aggregates, Inc. for good cause shown by Commonwealth Recycled Aggregates, Inc. 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, Commonwealth Recycled Aggregates, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Commonwealth Recycled Aggregates, Inc. consents to venue in the Circuit Court of Prince William County for any civil action taken to enforce the terms of this Order.
5. Commonwealth Recycled Aggregates, Inc. 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 Commonwealth Recycled Aggregates, Inc. 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. Commonwealth Recycled Aggregates, Inc. 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. Commonwealth Recycled Aggregates, Inc. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Commonwealth Recycled Aggregates, Inc. 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 Commonwealth Recycled Aggregates, Inc.. Nevertheless, Commonwealth Recycled Aggregates, Inc. 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 Commonwealth Recycled Aggregates, Inc. has completed all of the requirements of the Order;
  - b. Commonwealth Recycled Aggregates, Inc. 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 Commonwealth Recycled Aggregates, Inc..

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

And it is so ORDERED this 20<sup>th</sup> day of October, 2017.

  
Thomas A. Faha Northern Regional Director  
Department of Environmental Quality

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Commonwealth Recycled Aggregates, Inc. voluntarily agrees to the issuance of this Order.

Date: 8-17-17 By: [Signature], CFO  
(Person) (Title)

Commonwealth of Virginia  
City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this 13 day of August, 2017, by James Dunstan who is CFO of the Commonwealth Recycled Aggregates, Inc., on behalf of the corporation.

[Signature]  
Notary Public

7606129  
Registration No.

My commission expires: 7/31/2018

Notary seal:

