



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Titan Virginia Ready-Mix LLC
FOR
Titan Sterling Ready-Mix Concrete Plant
VPDES Permit No. VAG11
Registration No. VAG110103**

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 Titan Virginia Ready-Mix LLC, regarding the Titan Sterling Ready-Mix Concrete Plant, 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 Titan Virginia Ready-Mix LLC concrete manufacturing facility, also known as the Titan Sterling Ready-Mix Concrete Plant, located at 22963 Concrete Plaza, Sterling, Virginia, from which discharges of process wastewater and 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. “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 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. Titan applied for coverage under General Permit No. VAG11 for the Facility, and was issued Registration No. VAG110103 on January 1, 2019.
15. “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.

16. "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.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "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.
20. "Titan" means Titan Virginia Ready-Mix LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Titan is a "person" within the meaning of 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.

SECTION C: Findings of Fact and Conclusions of Law

1. Titan owns and operates the Facility and leases the real estate that houses the Facility. The Permit allows Titan to discharge process wastewater and stormwater associated with industrial activities from the Facility, to Indian Creek (Outfall 001) and an unnamed tributary (UT) of Indian Creek (Outfalls 002 and 003), in strict compliance with the terms and conditions of the Permit.
2. Based on DEQ's 2018 305(b) report, the receiving segment of Indian Creek is impaired for recreation use (bacteria), while supporting of the wildlife and aquatic life uses. The

fish consumption use was not assessed. The aquatic life use monitoring data used for the assessment did not include benthic macroinvertebrate bioassessment.

Horsepen Run is located less than a mile downstream from the Facility, and based on DEQ's 2018 305(b) report, this segment of Horsepen Run is impaired for the aquatic life use based on benthic macroinvertebrate bioassessment. Starting approximately four miles downstream from the Facility, Broad Run is impaired for the fish consumption use due to a Virginia Department of Health PCB fish consumption advisory.

3. DEQ staff performed an inspection of the Facility and a review of Facility records on June 3, 2019.
4. During the June 2019 Facility inspection, DEQ staff measured a pH value of 11.65 standard units at Outfall 002.
5. Part I.A.1 of the Permit limits the pH in discharges from Outfall 002 to a maximum of 9.0 standard units.
6. During the June 2019 inspection, DEQ staff observed the presence of accumulated residual concrete solids downstream of Outfall 002.
 - a. In written correspondence to DEQ dated June 13, 2019, Titan stated the accumulated solids had been cleaned up in June 2019 following DEQ's inspection of the Facility.
 - b. In written correspondence to DEQ dated November 6, 2019, Titan explained that the accumulated solids resulted from stormwater runoff from associated activities at Outfall 003, and were not from untreated process wastewater from Outfall 002.
 - c. During follow-up discussions with DEQ, it was explained to Titan that even though stormwater discharges from industrial activity was permitted from all three Facility outfalls, the Permit expressly prohibits the discharge of any form of concrete solids.
7. Parts I.B.2, I.B.4, and I.B.5 of the Permit state the following, respectively:
 - a. Part I.B.2: "Except as expressly authorized by this permit, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, byproduct or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to surface waters."
 - b. Parts I.B.4: "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.”

- c. Part I.B.5: “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.

Part III.F of the Permit also states the following: “F. Unauthorized Discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

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.

8. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
9. The Department has issued no permits or certificates to Titan for the Facility other than VPDES Permit Registration No. VAG110103.
10. Indian Creek and the UT of Indian Creek that feeds into Indian Creek are surface waters located wholly within the Commonwealth and is a “state water” under State Water Control Law.
11. On October 30, 2019, NRO issued Notice of Violation (NOV) No. W2019-10-N-0010 to Titan for the violations described above in paragraphs C(3) through C(10).
12. On November 6, 2019, Titan submitted a written response to the NOV, and on December 10, 2019, DEQ staff met with representatives of Titan to discuss the NOV, Titan’s response, and enforcement proceedings.
13. Titan’s NOV response demonstrated satisfactory completion of corrective actions to address the items cited in the NOV.
14. Based on DEQ observations during the June 3, 2019 inspection, the June 13, 2019 inspection report response from Titan, Titan’s written NOV response dated November 6, 2019, DEQ’s review of submitted files, and related correspondence between DEQ and

representatives of Titan concerning the inspection and NOV, the Board concludes that Titan has violated Parts I.A.1, I.B, III.F, of the Permit and 9 VAC 25-31-50, as described above in paragraphs C(1) through C(13).

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Titan, and Titan agrees to pay a civil charge of **\$6,825** 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

Titan 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, Titan 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 Titan for good cause shown by Titan, 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. W2019-10-N-0010 dated October 30, 2019. 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, Titan admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Titan 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. Titan 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 Titan 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. Titan 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. Titan shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Titan 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.

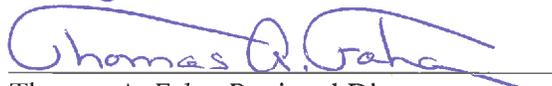
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Titan. Nevertheless, Titan 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 Titan has completed all of the requirements of the Order;
 - b. Titan 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 Titan.

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

And it is so ORDERED this 10 day of August, 2020.


Thomas A. Faha, Regional Director
Department of Environmental Quality

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Titan Virginia Ready-Mix LLC voluntarily agrees to the issuance of this Order.

Date: 27 June 20 By: Louis Rettilo, V.P.
(Person) (Title)
Titan Virginia Ready-Mix LLC

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 27th day of May, 2020, by Louis Rettilo who is Vice President of Titan Virginia Ready-Mix LLC, on behalf of the company.

Linda A. Hall
Notary Public

7527399
Registration No.

My commission expires: 01/31/2023

Notary seal:

