



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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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

Larry T. Waltrip

VPDES Permit No. VAR05

Storm Water Registration No. VAR051637

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 Larry T. Waltrip 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. "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 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. "DMR" means Discharge Monitoring Report.
9. "Facility" means the Waltrip Property, a closed Construction/Demolition Debris landfill, wood recycling, log storage, sawmill, mulch production, small private airport and concrete recycling facility, located at 100 Marclay Road in Williamsburg, Virginia, from which discharges of stormwater associated with industrial activity occur.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "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.
12. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2009, which expired on June 30, 2014 and which was reissued on July 1, 2014 and which expires on June 30, 2019. Waltrip applied for registration under the Permit and was issued Registration No. VAR051637 on January 22, 2015.
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. "Registration statement" means a registration statement for coverage under a storm water general permit.
16. "Regulation" means the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10, *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "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.
19. "SWP3" means Stormwater Pollution Prevention Plan.
20. "TMDL" means Total Maximum Daily Load.
21. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means Virginia Administrative Code.
24. "VPDES" means Virginia Pollutant Discharge Elimination System.
25. "Waltrip" means Larry T. Waltrip, currently a resident of Williamsburg, Virginia. Waltrip is a 'person' within the meaning of Va. Code §62.1-44.3.

SECTION C: Findings of Fact and Conclusions of Law

1. Waltrip owns and operates the Facility located at 100 Marclay Road in Williamsburg, Virginia, which discharges stormwater associated with industrial activity.
2. The Permit allows Waltrip to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary of College Creek, in strict compliance with the terms and conditions of the Permit.
3. College Creek is located in the James River Basin watershed. College Creek is listed in DEQ's 305(b) report as impaired for aquatic life use based on dissolved oxygen

concentrations that are below the minimum criteria and for fish consumption due to Polychlorinated Biphenyls in fish tissue. Industrial point source discharges are listed among the potential sources of the impairments.

4. During a DEQ Facility inspection on March 26, 2015 and subsequent Facility record review, DEQ staff documented the following compliance deficiencies with respect to the requirements of the Permit:
 - a. A new (complete) Registration Statement was not submitted to DEQ at least 90 days prior to the June 30, 2014 expiration date of the Permit.
 - b. The Registration Statement submitted by Waltrip did not include all regulated activities conducted at the Facility.
 - c. Records of employee training were not provided.
 - d. The results of Facility inspections performed were not provided.
 - e. The CSCE for 2014 did not meet the required scope of the compliance evaluation having failed to evaluate six of the nine required elements of the CSCE.
 - f. CSCE records for 2012 and 2013 were not provided.
 - g. Records of quarterly visual monitoring were not provided for 2012, 2013, and 2014.
 - h. Records of benchmark monitoring of storm water discharges were not provided for 2012, 2014, 2nd semi-annual monitoring event of 2015, and the 1st and 2nd semi-annual monitoring events of 2016.
 - i. Records of TMDL monitoring for total suspended solids (TSS), total nitrogen (TN), and total phosphorus (TP) were not provided for the 2nd semi-annual monitoring event of 2015, and the 1st semi-annual monitoring event of 2016.
 - j. DMRs were not filled in, submitted or maintained with the SWPP for 2011, 2012, and 2014.
5. Part II.M of the 2009 Permit requires Registration Statements to be submitted to DEQ at least 90 days prior to the expiration of the Permit.
6. The Regulation at 9 VAC 25-151-60 requires Registration Statements to include all regulated activities conducted at the site.
7. Part III.B.4.b(6) of the Permit requires that Facility employees be trained in storm water pollution prevention and that the SWPP contain a record of training performed.
8. Part III.B.5 of the Permit requires that the Facility be inspected at least quarterly for compliance with the Facility SWP3 and the inspection results documented in the SWPP.
9. Part III.E of the Permit requires that a CSCE be conducted at least annually and specifies nine elements to be evaluated and that a written report of the inspection be kept with the SWPP.

10. Part I.A of the Permit requires quarterly visual examinations and benchmark monitoring to be conducted and documented.
11. Part II.C.2 of the Permit requires monitoring results to be reported to DEQ on a DMR.
12. Part II.B.2 of the Permit requires monitoring results to be maintained with the Facility SWPPP.
13. TRO issued NOV No. W2015-04-T-0002 dated May 8, 2015, NOV No. W2016-02-T--0002 dated February 9, 2016, NOV No. W2016-08-T-0002 dated August 5, 2016, and NOV No. W2017-02-T-0003 dated February 3, 2017 for the violations noted in paragraphs C(4) through C(12), above.
14. Waltrip responded to the May 8th NOV on May 19, 2015 by submitting records and a letter outlining corrective actions that had been taken at the Facility.
15. 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
16. The Regulation, at 9 VAC 25-151-70, 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.
17. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
18. The Department has issued coverage under no permits or certificates to Waltrip other than under VPDES Permit No. VA051637.
19. The unnamed tributary of College Creek is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
20. Based on the results of the March 26, 2015 inspection, documentation submitted by Waltrip on May 19, 2015, and subsequent records review, the Board concludes that Waltrip has violated Part II.M, Part III.B.4.b(6), Part III.B.5, Part III.E, Part I.A, Part II.C.2, Part II.B.2 of the Permit and 9 VAC 25-151-60 of the Regulations and the State Water Control Law, as described in paragraphs C(4) through C(12), above.
21. On March 7, 2017, DEQ staff met with Mr. Waltrip and representatives to review the draft Order forwarded to Waltrip on November 18, 2015, January 13, 2016, November 16, 2016 and February 13, 2017. Mr. Waltrip noted during the meeting that he had turned the operation of the Facility, including compliance with the Permit, to a third party in 2015. According the Mr. Waltrip, the third party had not maintained compliance with the Permit, was now out of the business, and he Mr. Waltrip had returned to the business to return the Facility to compliance with the Permit.

22. In order for Waltrip to complete his return to compliance, DEQ staff and Waltrip 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 Waltrip, and Waltrip agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$11,762.00 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>
July 1, 2017	\$4,762
August 1, 2017	\$1,750
September 1, 2017	\$1,750
October 1, 2017	\$1,750
November 1, 2017	\$1,750

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 by 30 days or more the entire remaining balance of the civil charge shall become immediately due and owing under this order and the Department may demand in writing full payment from Waltrip. Within 15 days of receipt of such demand letter Waltrip shall pay the entire remaining balance of the civil charge. Any acceptance by the Department of a late payment or a payment of less than the entire remaining balance shall not act 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 shall be delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

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

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Waltrip, for good cause shown by Waltrip, 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 the purposes of this Order and subsequent actions with respect to this Order only, Waltrip admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Waltrip 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. Waltrip declares he has received fair and due process under the Administrative Process Act and the State Water Control Law and he 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 Waltrip 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. Waltrip 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 occurrence. Waltrip shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Waltrip 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 Waltrip intends 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, their 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 Waltrip. Nevertheless, Waltrip 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 Waltrip has completed all of the requirements of the Order;
 - b. Waltrip petitions the Director or his designee to terminate the Order after he 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 Waltrip.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Waltrip from his 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 Waltrip 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 Waltrip 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 Waltrip to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Waltrip.

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 his signature below, Waltrip voluntarily agrees to the issuance of this Order.

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And it is so ORDERED this 1 day of JUNE, 2017.


Craig R. Nicol
Regional Director
Department of Environmental Quality

Larry T. Waltrip voluntarily agrees to the issuance of this Order.

Date: 3/30/2017 By: Larry T. Waltrip
Larry T. Waltrip

Commonwealth of Virginia
City/County of Williamsburg

The foregoing document was signed and acknowledged before me this 30th day of March, 2017, by Larry T. Waltrip.


Notary Public
7666079
Registration No.

My commission expires: 5/31/2019

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Waltrip shall:

1. By April 10, 2017, July 10, 2017, October 10, 2017, and January 10, 2018, submit:
 - a. Quarterly DMRs that include sampling results for the parameters listed in Part 1.A.1 of the Permit for the preceding quarter (i.e. 2nd, 3rd, and 4th quarter 2017 and 1st quarter 2018);
 - b. Results of routine Facility inspections;
 - c. Visual examinations of storm water quality conducted, to ensure compliance with the Facility SWP3 and the Permit during the preceding three-month period;
 - d. Reports shall include any corrective action taken in response to deficiencies noted during any inspection or examination.
2. By April 10, 2017, July 10, 2017, October 10, 2017, and January 10, 2018, submit TMDL sampling results for TSS, TN, and TP.
3. Comply with all conditions of the Permit.
4. Mail all submittals and reports required by this Appendix A to:

Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462