



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Northern Virginia Regional Office
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Robert G. Burnley
Director

Jeffery A. Steers
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

DuBROOK CONCRETE, Inc.

(VAG110094)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a and 8d) and 10.1-1185 between the State Water Control Board and DuBrook Concrete, Inc., for the purpose of resolving certain violations of the State Water Control Law and Regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.

7. "TSS" means Total Suspended Solids.
8. "Permit" means Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Ready-Mixed Concrete Plants No. VAG11.
9. "DMR" means Discharge Monitoring Report.
10. "DuBrook" means DuBrook Concrete, Inc., a corporation registered and authorized to do business in Virginia.

SECTION C: Finding of Facts and Conclusions of Law

1. DuBrook Concrete, Inc. owns and operates a ready-mixed concrete production facility in Chantilly, Virginia. The facility discharges wastewater into Sand Branch in the Potomac River Basin. The discharges are the subject of the Permit, which was issued on October 1, 2003 and expires on September 30, 2008.
2. The Permit limits the concentration of TSS in DuBrook's effluent to a monthly average of 30 mg/l. DuBrook reported to DEQ that it exceeded this limit by discharging an average of 39 mg/l in February 2004, 35 mg/l in March 2004, 52 mg/l in April 2004, and 45 mg/l in August 2004.
3. After an investigation into the cause of the exceedences, DuBrook believes that they were the result of wastewater not properly flowing through the facility's three settling ponds. In September 2004 DuBrook realigned the pipe between Ponds 2 and 3, which it believed had been knocked out of position while solids were being cleaned out of the pond at an indeterminate time in the past. DuBrook is also planning additional upgrades and repairs to the ponds which are incorporated in Appendix A of this Order.
4. The Permit requires DuBrook to provide an explanation of any noncompliance along with its monthly DMR. DuBrook's DMR for April 2004 did not contain an explanation of the TSS exceedence.
5. The Permit requires DuBrook to maintain a minimum pH of at least 6.0 SU. DuBrook reported to DEQ that it failed to meet this limit by discharging effluent with a pH of 4.37 in June 2004 and 5.45 in July 2004. At a DEQ inspection of the facility on July 9, 2004 it was discovered that a pH drip system used to regulate the acidity of the effluent was constantly dosing rather than cycling. DuBrook staff repaired the system and pH levels returned to the permitted range.
6. DuBrook's June 2004 DMR was not received by DEQ by July 10, 2004 as required. On October 19, 2004, DuBrook produced a photocopy of the DMR, stating that it believed that

the original had been sent in on time. A comprehensive search of DEQ's files for the facility confirmed that no DMR had been received for the month of June.

7. The Permit requires DuBrook to implement a storm water pollution prevention plan which includes conducting and keeping records of quarterly routine facility inspections and annual comprehensive site compliance evaluations. On October 15, 2004 DEQ conducted a compliance inspection of the DuBrook facility. During the inspection, only limited records of the required self inspections and evaluations were available. DuBrook has claimed that it had in fact conducted the required inspections and evaluations, but had been lax in maintaining documentation.
8. Also during the October 15, 2004 inspection, DEQ discovered that the pH calibration procedure used by DuBrook staff was not performed in a manner that ensures accuracy of the measurements, as required by the Permit. Specifically the following was observed: (1) the pH meter was only calibrated using one buffer instead of two; (2) no records of calibrations were being maintained; (3) buffer solutions did not have expiration dates listed on them and were not prepared within the previous four weeks; and (4) the protective sleeve covering the access hole on the reference electrode was not open when taking measurements.
9. During a site visit on December 7, 2004, DEQ observed that silt fencing along the facility's waste concrete storage area had been breached and remained unrepaired in violation of the Permit requirement to implement a storm water pollution prevention plan.
10. DEQ issued the following Warning Letters and Notices of Violation for the violations described above: WL No. W2004-04-N-1039, issued May 7, 2004; WL No. W2004-06-N-1001, issued June 11, 2004; WL No. W2004-08-N-1003, issued August 5, 2004; NOV No. W2004-10-N-0002, issued October 7, 2004; and NOV No. W2004-11-N-0005, issued November 5, 2004.

SECTION D: Agreement and Order

Accordingly the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a and 8d) and 10.1-1185, orders DuBrook Concrete, Inc. and DuBrook voluntarily agrees that:

1. DuBrook shall perform the actions described in Appendix A to this Consent Order to remedy the violations described above.
2. DuBrook shall pay a civil charge of \$3,100 within 30 days of the effective date of the Consent Order in settlement of the violations cited in this Consent Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality

Post Office Box 10150
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check, DuBrook shall indicate that this payment is submitted pursuant to this Consent Order and shall include the Federal Identification Number for DuBrook Concrete, Inc.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of DuBrook, for good cause shown by DuBrook, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Warning Letters issued on May 7, 2004, June 11, 2004, and August 5, 2004, and the NOVs issued on October 7, 2004 and November 5, 2004, as listed above in Section C10. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, DuBrook admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. DuBrook 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. DuBrook declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 enforce this Order.
6. Failure by DuBrook 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. DuBrook 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. DuBrook shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. DuBrook shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order.

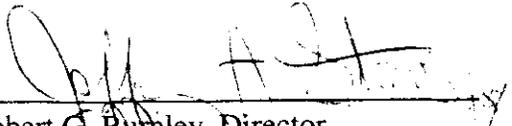
Such notice shall set forth:

- 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.

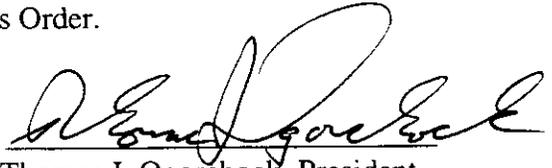
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which DuBrook intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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 DuBrook. Notwithstanding the foregoing, DuBrook agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to DuBrook. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve DuBrook from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, DuBrook voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of July 5, 2005.


Robert G. Burnley, Director
Department of Environmental Quality

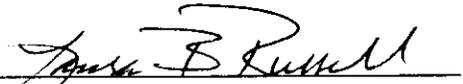
DuBrook Concrete, Inc. voluntarily agrees to the issuance of this Order.

By: 
Thomas J. Ogorchock, President
DuBrook Concrete, Inc.

Date: 5-19-05

Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 19 day of
May, 2005, by Thomas J. Ogorchock, who is President of DuBrook Concrete, Inc., on behalf of
said company.


Notary Public

My commission expires: January 31, 2009

**APPENDIX A
SCHEDULE OF COMPLIANCE**

1. By May 1, 2005, DuBrook shall replace the pipe between Pond 1 and Pond 2 to ensure proper flow between the ponds. DuBrook shall notify DEQ in writing once when this item is completed.
2. By June 1, 2005, DuBrook shall submit a plan to upgrade its settling ponds, which shall include concrete linings and ramps to facilitate the removal of settled solids and to ensure that the pipes connecting the ponds do not become dislodged during the solids removal process.
3. DuBrook shall complete construction of the upgrade within four months of approval of the plan by DEQ. DuBrook shall notify DEQ in writing once when this item is completed.
4. By February 15, 2005, DuBrook shall submit copies of its quarterly routine inspection form and annual comprehensive site compliance evaluation form to DEQ for review and comment. Upon receiving DEQ's comments, DuBrook shall immediately incorporate the comments into the forms and update its SWPPP accordingly.
5. Beginning March 1, 2005 and continuing until the cancellation of this Order, DuBrook shall submit copies of routine inspection and comprehensive evaluation records to DEQ along with the DMR due for the monitoring period in which the inspection or evaluation occurred.
6. By March 15, 2005, DuBrook shall review and revise its O&M Manual to ensure proper management practices to prevent the release of waste material to Sand Branch. By March 15, 2005, DuBrook shall submit a copy of the O&M Manual to DEQ for review and comment. Upon receiving DEQ's comments, DuBrook shall immediately incorporate the comments into the O&M Manual.