



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
LOPEZ TRUCKING II, LLC
FOR
LOPEZ TRUCKING II, LLC FACILITY
VPDES Permit Registration No. VAR051083**

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 Lopez Trucking II, LLC, regarding the Lopez Trucking II, LLC 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. "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. "DMR" means Discharge Monitoring Report.
6. "Facility" means the Lopez Trucking II, LLC facility, located at 10132 Giles Run Road, Lorton, Virginia 22079, (Fairfax County) from which discharges of stormwater associated with industrial activity occur.
7. "Lopez Trucking II, LLC" means Lopez Trucking II, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Lopez Trucking II, LLC is a "person" within the meaning of Va. Code § 62.1-44.3.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "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.
10. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014, and which expired on June 30, 2019. Lopez Trucking II, LLC applied for the transference of registration under the Permit and was issued Registration No. VAR051083 on February 17, 2016.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "Registration statement" means a registration statement for coverage under a storm water general permit.
13. "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.*
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "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.
16. "SWPPP" means Stormwater Pollution Prevention Plan.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.

19. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. LT AGE LLC owns and Lopez Trucking II, LLC operates, the Lopez Trucking II, LLC facility located at 10132 Giles Run Road, Lorton, Virginia, which discharges stormwater associated with industrial activity.
2. The Permit allows Lopez Trucking II, LLC to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary of Giles Run, in strict compliance with the terms and conditions of the Permit.
3. Giles Run is located in the Occoquan River Basin. Giles Run is listed in DEQ's 305(b) report as impaired for fish consumption, aquatic life use, and recreational use.
4. During a DEQ Facility inspection on June 12, 2019, DEQ staff documented the following compliance deficiencies with respect to the requirements of the Permit:
 - a. The quarterly visual examinations of stormwater quality required by Part I.A.1.a of the Permit had not been performed or documented.
 - i. Part I.A.1.a.(1) of the Permit requires that the permittee perform and document quarterly visual examinations of stormwater discharge associated with industrial activity at each outfall.
 - b. No SWPPP was available for review.
 - i. Part III of the Permit requires that the permittee develop and implement a SWPPP for the Facility covered under the Permit. Certification that a SWPPP has been developed for the Facility is a prerequisite to coverage under the Permit.
 - c. The quarterly routine facility inspections required by Part III.B.5 of the Permit had not been performed or documented.
 - i. Part III.B.5 of the Permit requires that qualified Facility personnel perform inspections at least quarterly to evaluate the condition and effectiveness of stormwater pollution control measures on site.
 - d. Annual staff training documentation was unavailable for review.
 - i. Part III.B.4.b.(6) of the Permit requires that the Permittee conduct stormwater employee training for relevant Facility employees.
5. During a DEQ file review, DEQ staff documented the following compliance deficiencies:
 - a. The benchmark discharge monitoring report for Outfall 001 was due for submission to DEQ by July 10, 2019, and was not received.

- i. Part I.A.1.b, Table 70-1, Part I.A.2.d.(2), and Part I.A.5.a of the Permit requires that semi-annual benchmark DMRs be completed and submitted to DEQ by the 10th day of the month following the end of the six-month monitoring period.
 - b. The registration statement for the Facility's continued coverage was due to be submitted to DEQ prior to the expiration of the Permit on May 2, 2019, and was not received until November 18, 2019. Permit coverage ended with the Permit's expiration on June 30, 2019.
 - i. Part II.M of the Permit requires that a permittee wishing to continue an activity regulated by the Permit must submit a new registration statement at least 60 days prior to the expiration date of the existing Permit in order to obtain continued Permit coverage.
 - ii. 9VAC25-31-190.B states that a permittee wishing to continue an activity regulated by the Permit after the Permit's expiration date must apply for, and obtain, a new permit.
6. NRO issued a Notice of Violation for the violations noted above: NOV No. W2019-08-N-0004, issued August 23, 2019.
7. Lopez Trucking II, LLC responded to the Notice of Violation by meeting with DEQ compliance, permitting, and enforcement staff on September 25, 2019. Following this meeting, on November 4, 2019, a draft copy of the SWPPP that Lopez Trucking II, LLC had developed was sent to DEQ. On November 18, 2019, DEQ received a registration statement from Lopez Trucking II, LLC.
8. 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
9. 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.
10. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
11. The Department has issued coverage under no permits or certificates to Lopez Trucking II, LLC other than under VPDES Permit No. VAR05 during the July 1, 2014, through June 30, 2019, period.
12. The unnamed tributary of Giles Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
13. Based on the results of the June 12, 2019, inspection and file review, the Board concludes that Lopez Trucking II, LLC has violated conditions Part I.A.1.b, Table 70-1; Part

I.A.2.d.(2); Part I.A.5.a; Part III.A; Part I.A.1.a; Part III.B.5; Part III.B.4.b.(6); and Part II.M of the Permit as noted in paragraphs C(1) through C(5) of this Order.

14. Lopez Trucking II, LLC has submitted documentation that verifies that the violation as described in paragraph C(4)(b), above, has been corrected.
15. In order for Lopez Trucking II, LLC to return to compliance, DEQ staff and Lopez Trucking II, LLC 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 Lopez Trucking II, LLC, and Lopez Trucking II, LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$10,000 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

| Due Date | Amount |
|--------------------------------|-----------------------|
| 60 days after Order execution | \$3,333.34 or balance |
| 120 days after Order execution | \$3,333.33 or balance |
| 180 days after Order execution | \$3,333.33 or balance |

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, 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 by Lopez Trucking II, LLC. Within 15 days of receipt of such letter, Lopez Trucking II, LLC shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under 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

Lopez Trucking II, LLC 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, Lopez Trucking II, LLC 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 Lopez Trucking II, LLC for good cause shown by Lopez Trucking II, LLC, 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, Lopez Trucking II, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Lopez Trucking II, LLC 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. Lopez Trucking II, LLC 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 Lopez Trucking II, LLC 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. Lopez Trucking II, LLC 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. Lopez Trucking II, LLC shall demonstrate

that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Lopez Trucking II, LLC 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 Lopez Trucking II, LLC. Nevertheless, Lopez Trucking II, LLC 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 Lopez Trucking II, LLC has completed all of the requirements of the Order;
 - b. Lopez Trucking II, LLC 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 Lopez Trucking II, LLC.

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

And it is so ORDERED this _____ day of _____, 20____.

Thomas A. Faha, Regional Director
Department of Environmental Quality

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Lopez Trucking II, LLC voluntarily agrees to the issuance of this Order.

Date: _____ By: [Signature], PRESIDENT
(Person) (Title)
Lopez Trucking II, LLC

Commonwealth of Virginia
City/County of Prince William

The foregoing document was signed and acknowledged before me this 20th day of August, 2020, by Enrique E. Lopez who is owner of Lopez Trucking II, LLC, on behalf of the company.

[Signature]
Notary Public
7736770
Registration No.

My commission expires: 09/30/21

Notary seal:

GEORGE I GALO
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES SEPT. 30, 2021
COMMISSION # 7736770

APPENDIX A SCHEDULE OF COMPLIANCE

1. **Lopez Trucking II, LLC shall complete the following:**

- a. Submit to DEQ NRO copies of the Quarterly Visual Monitoring examination reports (Permit Part I.A.1.a) for the two quarters following execution of this Order (inclusive to the quarter in which the Order is executed). These reports shall be submitted by the 10th day of the month following the end of the monitored quarter, e.g., a visual examination report for the January 1st – March 31st monitoring period shall be submitted to DEQ no later than April 10th.
- b. Submit to DEQ NRO copies of the Routine Facility Inspection reports (Permit Part III.B.5) for the two quarters following execution of this Order (inclusive to the quarter in which the Order is executed). These reports shall be submitted by the 10th day of the month following the end of the monitored quarter, e.g., a routine inspection report for the January 1st – March 31st monitoring period shall be submitted to DEQ no later than April 10th.
- c. Submit to DEQ the Facility's SWPPP training documentation within 30 days of the training being completed for the 2020 calendar year.

2. **DEQ Contact**

Unless otherwise specified in this Order, Lopez Trucking II, LLC shall submit all requirements of Appendix A of this Order to:

**Virginia Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193**