



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

NORTHERN REGIONAL OFFICE  
13901 Crown Court, Woodbridge, Virginia 22193  
(703)583-3800  
[www.deq.virginia.gov](http://www.deq.virginia.gov)

Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director  
(804) 698-4000

Thomas A. Faha  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
American Woodmark Corporation  
FOR  
American Woodmark – Orange Dimension Mill  
VPDES Permit No. VAR05  
Registration No. VAR051040**

**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 American Woodmark Corporation, regarding the American Woodmark – Orange Dimension Mill, 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. "AWC" or "American Woodmark" means American Woodmark Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. AWC is a "person" within the meaning of Va. Code § 62.1-44.3.

3. "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.
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. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Facility" means the American Woodmark – Orange Dimension Mill, located at 281 Kentucky Road, Orange County, Virginia, from which discharges of stormwater associated with industrial activities occurs.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
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. VAR05, the VPDES General Permit for Stormwater Discharges Associated with Industrial Activity, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expired on June 30, 2019. AWC applied for coverage under General Permit No. VAR05 and was issued Registration No. VAR051040 on August 26, 2014.
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: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) 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; (b) the discharge of untreated sewage by any owner into state waters; and (c) 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. "SWPP" means Stormwater Pollution Prevention Plan. The Permit requires a SWPPP to be developed and implemented at the Facility. The SWPPP is intended to document the selection, design, and installation of control measures, including best management practices, to minimize the pollutants in all stormwater discharges from the Facility, and to meet applicable effluent limitations and water quality standards.
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.
24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

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

1. AWC owns the Facility. The Permit allows AWC to discharge stormwater associated with industrial activities from the Facility, to an unnamed tributary of Laurel Run, in strict compliance with the terms and conditions of the Permit.

2. The unnamed tributary of Laurel Run has been neither monitored nor assessed. Based on DEQ's 2016 305(b) report, there were no listed impairments for the receiving stream or downstream that are applicable to this Facility.
3. Part I.A.1.b, of the Permit requires AWC to conduct benchmark monitoring of stormwater discharges from the Facility for the presence of pollutants of concern once during each semi-annual monitoring period, and to record the benchmark monitoring results on a DMR.
4. Parts I.A. and II.C. of the Permit require AWC to submit the results of the benchmark and TMDL monitoring on a DMR to the Department by January 10 and July 10 of each year, with TMDL monitoring only being required for the first four semi-annual monitoring periods.
5. AWC submitted two DMRs late as follows:
  - a. The benchmark monitoring DMR for July through December 2016 was due by January 10, 2017; DEQ received this DMR on February 12, 2017; and
  - b. The DMR for Chesapeake Bay TMDL monitoring for July through December 2014 was due by January 10, 2014; DEQ received this DMR on April 6, 2015.
6. AWC failed to comply with permit requirements concerning sample collection methodology and analysis that rendered some monitoring data invalid as follows:
  - a. The TSS sample reported on the July through December 2014 semiannual benchmark DMR was analyzed outside of the allowable sample holding time of seven days, and therefore, the TSS data is invalid.
  - b. The Total Nitrogen and Total Phosphorus samples reported on the January through June 2015 semiannual Chesapeake Bay TMDL DMR were not properly preserved with acid, as it was reported that the samples were placed on ice for preservation. Therefore, the total nitrogen and total phosphorus data are invalid.
7. Part II.A of the Permit requires that: (1) monitoring be conducted in accordance with approved procedures under 40 CFR Part 136 or an alternative method approved by the U.S. Environmental Protection Agency; and (2) that collected samples be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).
8. The DMRs submitted by AWC for the July through December 2016 monitoring period reported that a preceding storm event occurred less than 72 hours prior to the storm event when the discharge sample was collected.

9. Part I.A.2.b of the Permit requires that the preceding measureable storm event be at least 72 hours prior to the measurable storm event in which sample collection is performed.
10. DEQ staff performed inspections of the Facility and a review of Facility records on April 27, 2017, and on January 10, 2019. Noncompliance was observed during the inspections as summarized below in paragraphs C(11) through C(22).
11. DEQ staff observed that AWC failed to conduct quarterly visual monitoring for one quarter in 2015, two quarters in 2016, and one quarter in 2017.
12. Parts I.A.1.a.(1) and I.A.2.d.(1) of the Permit require that a quarterly visual examination of stormwater discharges from the Facility's outfalls be performed and documented. If no storm event resulted in runoff from the Facility during a monitoring quarter, visual monitoring for that quarter is excused, provided that documentation is included with the monitoring records indicating that no runoff occurred.
13. DEQ staff observed that AWC failed to conduct a quarterly routine facility inspection for one quarter in 2015, two quarters in 2016, and one quarter in 2017.
14. Part III.B.5 of the Permit requires that quarterly routine facility inspections be performed and documented by Facility personnel who possess the knowledge and skills to adequately perform such inspections.
15. During the Facility inspection conducted in April 2017, DEQ staff observed that the Facility was not conducting annual comprehensive site compliance evaluations.  
  
During the January 2019 inspection, DEQ staff observed that AWC did not complete a comprehensive site compliance evaluation in calendar year 2018.
16. Part III.E of the Permit requires that an annual comprehensive site compliance evaluation be performed and documented by qualified personnel who possess the knowledge and skills to adequately perform such evaluations. The qualified personnel may be a Facility employee or outside personnel hired by the Facility to perform the evaluation.
17. During the February 2019 Facility inspection, DEQ staff made the following observations concerning the Facility's housekeeping practices for preventing/limiting pollutants in stormwater discharges:
  - a. Exposed vehicles/equipment awaiting maintenance was observed with active leaks.
  - b. Petroleum leakage was observed at the fueling station adjacent to Moore Street.
  - c. Exposed sawdust was observed outside the limits of the designated, covered, storage area.

- d. Improperly maintained stormwater drop inlets were observed covered with rocks/debris/dirt/sticks.

18. Part III.B.4.b.(1) of the Permit requires AWC to keep clean all exposed areas of the Facility that are potential sources of pollutants to stormwater discharges.

Part III.B.4.b.(3) of the Permit requires AWC to have and implement a preventative maintenance program that includes regular inspection, testing, maintenance and repairing of all industrial equipment and systems to avoid situations that could result in leaks, spills and other releases of pollutants in stormwater discharged from the facility.

Part IV.C.2. of the Permit also provides a specific list of areas at the site that shall be addressed with stormwater management controls. The list of areas includes residue storage areas, material handling areas, and vehicle maintenance, storage, and repair areas.

19. During the April 2017 Facility inspection, DEQ staff observed that AWC's SWPPP for the Facility was not adequately updated. In addition to missing Facility inspections and quarterly visual monitoring events (as described above), the SWPPP presented to DEQ during the inspection was last signed in 2014 and there was no documentation showing any review or updates to the SWPPP had since been completed.

During the January 2019 Facility inspection, DEQ staff observed that AWC's SWPPP for the Facility was not adequately updated. After the DEQ's April 2017 inspection, AWC changed environmental consultants and had the SWPPP for the Facility revised/updated, which addressed many of the previous deficiencies. However, as observed during the January 2019 inspection, the updated SWPPP had not been signed and dated by AWC Facility management.

20. Part III.F of the Permit requires AWC to sign the SWPPP and make modifications/changes to the SWPPP as required by various parts of the Permit.

Part III.G of the Permit requires AWC to maintain an updated SWPPP and specifies when and how the SWPPP should be amended by AWC as appropriate.

Part I.A.6.b of the Permit also requires AWC to review and modify the SWPPP as necessary to address any deficiencies, and to revise the SWPPP within 30 days of discovering a deficiency.

21. DEQ staff observed that ESC, AWC's third party environmental firm, did not submit a TMDL Action Plan annual report to DEQ by June 30, 2017, June 30, 2018, and June 30, 2019.

AWC had previously submitted a TMDL Action Plan to DEQ on September 28, 2016, based on the Facility's calculated nutrient loading data.

22. Part I.B.7.b.(3)(d) of the Permit requires AWC to develop and implement a Chesapeake Bay TMDL Action Plan and to submit an annual report to the Department by June 30 each year describing AWC's progress in meeting the required pollutant load reductions.
23. NRO issued one Warning Letter and four Notices of Violation to AWC for the violations described above in paragraphs C(1) through C(22) as follows:
  - a. WL No. W2014-03-N-1005 dated March 7, 2014;
  - b. Referral NOV No. W2015-03-N-0007 dated March 20, 2015;
  - c. NOV No. W2017-04-N-0012 dated April 17, 2017;
  - d. NOV No. W2017-06-N-0010 dated June 13, 2017; and
  - e. NOV No. W2019-05-N-0007 dated May 20, 2019.
24. On January 21, 2019, AWC submitted a written response to DEQ's January 2019 inspection, which included an action plan and documentation showing the planning and/or completion of some corrective actions by AWC, as discussed with DEQ staff during the inspection.
25. On June 11, 2019, AWC submitted a written response to the May 20, 2019 NOV.
26. On July 16, 2019, DEQ staff met with representatives of AWC to discuss the enforcement case and AWC's plans to bring the Facility into compliance with the Permit.
27. On September 6, 2019, AWC submitted a response and documentation in follow-up meeting held at NRO on July 16, 2019. The submitted documentation showed that AWC had sufficiently addressed the issues of noncompliance described above in paragraphs C(6) through C(22).
28. Also discussed during the July 16, 2019 meeting was a discharge of process water from the Facility, observed by DEQ staff during the January 2019 inspection. Based on information provided by AWC and DEQ's inspection observations, DEQ sent an email to AWC on July 24, 2019, providing notification that the discharge from the boiler building is a process water discharge that is not covered by the Permit.

DEQ requested AWC cease the discharge, and explained to AWC possible options for managing the discharge.
29. Parts I.B.1 and IV.B.2 of the Permit provide lists of allowable non-stormwater discharges that AWC is allowed to discharge under the Permit, and those lists do not include the type of discharge that AWC is discharging from its boiler building.

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.

30. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
31. The Department has issued no permits or certificates to AWC for the Facility other than VPDES Permit Registration No. VAR051040.
32. The unnamed tributary of Laurel Run is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
33. On October 3, 2019, DEQ was informed by a representative of AWC that AWC intends to resolve the unpermitted discharge via a connection to the local sanitary sewer system.
34. Based on DEQ observations during the April 27, 2017 and January 10, 2019 inspections, AWC’s January 21, 2019 inspection response, AWC’s June 11, 2019 NOV reply, DEQ’s review of submitted files, and correspondence between DEQ and AWC, the Board concludes that AWC has violated Parts I.B.7.b.(3)(d), II.A, II.C, III.B.4.b.(1), III.B.4.b.(3), III.B.5, III.E, III.F, III.G, and IV.C.2 of the Permit, and several sections of Part I.A of the permit, including but not limited to Parts I.A.1.a.(1), I.A.2.d.(1), and I.A.2.b, by discharging stormwater associated with industrial activity from the Facility while concurrently failing to comply with the conditions of the Permit, as described above in paragraphs C(1) through C(33).
35. In order for AWC to complete the Facility’s return to compliance, DEQ staff and representatives of AWC 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 AWC, and AWC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$7,551.25** 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

AWC 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, AWC 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 AWC for good cause shown by AWC, 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. W2019-05-N-0007 dated May 20, 2019, NOV No. W2017-06-N-0010 dated June 13, 2017, NOV No. W2017-04-N-0012 dated April 17, 2017, referral NOV No. W2015-03-N-0007 dated March 20, 2015, and WL No. W2014-03-N-1005 dated March 7, 2014. 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, AWC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. AWC 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. AWC 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 AWC 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. AWC 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. AWC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. AWC 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 AWC. Nevertheless, AWC 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 AWC has completed all of the requirements of the Order;
  - b. AWC 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 AWC.

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

And it is so ORDERED this 3<sup>rd</sup> day of April, 2020.



Thomas A. Faha, Regional Director  
Department of Environmental Quality

------(Remainder of Page Intentionally Blank)-----

Consent Order

American Woodmark Corporation; VPDES Permit Registration No. VAR051040

Page 12 of 13

American Woodmark Corporation voluntarily agrees to the issuance of this Order.

Date: 1/31/20 By: Adam Kell, Director of Manufacturing  
(Person) (Title)  
American Woodmark Corporation

Commonwealth of Virginia

City/County of Orange

The foregoing document was signed and acknowledged before me this 31<sup>st</sup> day of January, 2020, by Adam Kell who is Director of manufacturing of American Woodmark Corporation, on behalf of the corporation.

Marian C. Bowler

Notary Public

7752471

Registration No.

Marian C. Bowler  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #7752471  
My Commission Expires 12/31/2021

My commission expires: 12/31/2021

Notary seal:

## **APPENDIX A SCHEDULE OF COMPLIANCE**

American Woodmark Corporation shall:

1. Within 30 days of the effective date of this Order, submit to DEQ a plan and schedule for review and comment with the steps AWC intends to take to address the unpermitted discharge of Facility process water to state waters via a connection to the local sanitary sewer. AWC shall respond to DEQ's comments on the plan and schedule within 10 days, or at a later date approved by DEQ in writing. Once notified by DEQ that the plan is acceptable, AWC shall implement said plan and schedule, which will become enforceable pursuant to this Order.
  - a. As part of the plan and schedule, AWC shall submit to DEQ documentation that the Town of Orange has accepted to receive AWC's process water discharge at the Town's wastewater treatment plant.
  - b. The submitted plan and schedule shall require AWC to cease any unpermitted discharge to state waters within 365 days of the effective date of this Order.
2. Unless otherwise specified in this Order, AWC shall submit all requirements of Appendix A of this Order to:

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