COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Doug Domenech
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Director

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Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Commonwealth Wood Preservers, Inc.
VPDES Permit No. VA0073555

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 Commonwealth Wood Preservers, Inc, 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. "Commonwealth Wood" means Commonwealth Wood Preservers, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Commonwealth Wood is a "person" within the meaning of Va. Code § 62.1-44.3.

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 Commonwealth Wood facility located at 5604 City Line Road, Hampton, Virginia, at which it chemically treats lumber for use in residential and commercial construction in a pressurized chamber with chemical solutions to prevent or retard the growth of mold and fungus and to prevent infestation by insects. Two of the three solutions used in the treatment process contain fine copper particles in suspension.

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 Permit No. VA0073555, which was issued under the State Water Control Law and the Regulation to Commonwealth Wood on June 30, 2009, and which expires on June 29, 2014.

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. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*

16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

17. "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.

18. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia

19. "Va. Code" means the Code of Virginia (1950), as amended.

20. "VAC" means the Virginia Administrative Code.

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

22. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

23. "WET" means whole effluent toxicity.

SECTION C: Findings of Fact and Conclusions of Law

1. Commonwealth Wood owns and operates the Facility. The Permit allows Commonwealth Wood to discharge storm water associated with industrial activity from the Facility, to an unnamed tributary to Salters Creek, in strict compliance with the terms and conditions of the Permit.

2. Salters Creek is located in the James River Basin and is not listed in DEQ's 305(b) report as impaired. Salters Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

3. Part I.A.1 of the Permit establishes limitations on the storm water discharging from the Facility through a single outfall that are based on the analysis of a composite sample taken from three separate drop inlets that lead to the single outfall. In submitting its DMRs, as required by the Permit, Commonwealth Wood has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit for WET, for the 4th Quarter of calendar year 2011, the 2nd, 3rd and 4th Quarters of calendar year 2012, and the 1st Quarter of calendar year 2013. Commonwealth Wood indicated that it believed the WET exceedances were anomalies caused by contamination at one or more of the drop inlets from sources unrelated to the process used at the Facility to chemically treat lumber.

4. TRO issued Warning Letters and Notices of Violation for the WET exceedances as follows: WL No.W2012-02-T-1022, dated February 29, 2012; WL No. W2012-07-T-1014, dated August 1, 2012; NOV No. W2013-01-T-0001, dated January 10, 2013; and NOV No. W2013-05-T-0001, dated May 8, 2013.

5. In response to the Warning Letters and Notices of Violation, Commonwealth Wood representatives met with TRO staff on February 21, 2013, and submitted a written response on February 27, 2013, outlining measures it would be taking to reduce the amount of pollutants that enter the three drop inlets. Among the measures proposed were placing physical barriers to forklift traffic near the entrances to the treated lumber storage building; requiring trucks carrying treated lumber to park under cover away from drop inlets; reminding Commonwealth Wood employees to ensure that treated lumber is drip-free before it is removed from the drip-pad; and performing individual copper analyses at the three drop inlets in addition to the analyses of the composite sample reported on DMRs.

6. 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."

7. 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 Commonwealth Wood other than VPDES Permit No. VA0073555.

10. Based on the DMRs for the 4th Quarter of calendar year 2011, the 2nd, 3rd and 4th Quarters of calendar year 2012, and the 1st Quarter calendar year 2013, the substance of the February 21, 2013, meeting, and the documentation submitted on February 27, 2013, the Board concludes that Commonwealth Wood has violated the Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50, by discharging from the Facility storm water that exceeded discharge limitations for WET while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(3), above.

11. In order for Commonwealth Wood to complete its return to compliance, DEQ staff and representatives of Commonwealth Wood 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 Commonwealth Wood, and Commonwealth Wood agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $6,950 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

Commonwealth Wood shall include its Federal Employer Identification Number (FEIN) (54-1030533) 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, Commonwealth Wood 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 Commonwealth Wood for good cause shown by Commonwealth Wood, 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, Commonwealth Wood admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Commonwealth Wood 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. Commonwealth Wood 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 Commonwealth Wood 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. Commonwealth Wood 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. Commonwealth Wood shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Commonwealth Wood 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 Commonwealth Wood. Nevertheless, Commonwealth Wood 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 Commonwealth Wood has completed all of the requirements of the Order;

    b. Commonwealth Wood 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 Commonwealth Wood.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Commonwealth Wood 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 Commonwealth Wood 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 Commonwealth Wood certifies that he or she is a responsible officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Commonwealth Wood to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Commonwealth Wood.

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, Commonwealth Wood voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 4 day of October, 2013.

Maria R. Vold
Regional Director
Department of Environmental Quality

Commonwealth Wood Preservers, Inc., voluntarily agrees to the issuance of this Order.

Date: 5/31/13 By: Millard McCoy, Pres.
(Person) (Title)
Commonwealth Wood Preservers, Inc.

Commonwealth of Virginia
City/County of Hampton

The foregoing document was signed and acknowledged before me this 31 day of May, 2013, by Millard Davis who is President of Commonwealth Wood Preservers, Inc., on behalf of the corporation.

Michelle Jones
Notary Public

272993
Registration No.

My commission expires: March 31, 2015

Notary seal:

MICHELLE R JONES
COMMONWEALTH OF VIRGINIA
REGISTRATION NO. 272993
NOTARY PUBLIC

APPENDIX A
SCHEDULE OF COMPLIANCE

Commonwealth Wood shall:

1. By January 1, 2014, submit to DEQ Tidewater Regional Office, for review and approval, a corrective action plan and schedule that fully examines the source(s) of the toxicity of the storm water discharging from the Facility and describes actions Commonwealth Wood has taken and plans to take to consistently reduce the toxicity of the storm water discharging from the Facility to a level below the discharge limit established in the Permit. The approved plan and schedule will include those measures outlined in paragraph C(5) of this Order and include a requirement that, when samples of storm water are collected at the three drop inlets for analysis and reporting on DMRs for all four quarterly reporting periods in calendar year 2014, split samples will be collected at each drop inlet and separately analyzed for whole effluent toxicity and total dissolved copper. The analyses of the split samples for whole effluent toxicity and total dissolved copper shall be included with the corresponding quarterly DMRs. Corrective action described in the approved plan and schedule shall be completed by January 1, 2015. Upon approval, said plan and schedule shall become a part of and enforceable under the terms of this Order.

2. Mail all submittals and reports required by this Appendix A to:

   Maria R. Nold, Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Boulevard
   Virginia Beach, VA 23462