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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
DUPONT TEIJIN FILMS U.S. LIMITED PARTNERSHIP
FOR
DUPONT TEIJIN FILMS, HOPEWELL SITE
VPDES Permit No. VA0003077**

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 DuPont Teijin Films U.S. Limited Partnership regarding the DuPont Teijin Films, Hopewell Site 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. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
6. "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.
7. "DMR" means Discharge Monitoring Report.
8. "DTF" means DuPont Teijin Films U.S. Limited Partnership a limited partnership authorized to do business in Virginia and its affiliates, partners and subsidiaries. DTF is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Facility" means the wastewater treatment plant located at DuPont Teijin Films, 3600 Discovery Drive, Chesterfield, Virginia. The wastewater treatment plant facility is comprised of two treatment plants. One plant is a process wastewater treatment plant and the second plant is a sanitary wastewater treatment plant. The process wastewater plant discharges through internal Outfall 101 and the sanitary wastewater plant discharges through internal Outfall 102. Both Outfalls 101 and 102 ultimately discharge to the James River via Outfall 001. These plants operate under VPDES Permit No. VA0003077, and treat and discharge treated effluent from DTF's business operations under VPDES Permit No. VA0003077.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "O&M" means operations and maintenance.
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. VA0003077, which was issued under the State Water Control Law and the Regulation to DTF on September 15, 2011 and expires on September 14, 2016.
15. "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.

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 (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.
17. "PRO" means the Piedmont Regional Office of DEQ, located in Glenn Allen, Virginia.
18. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "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.
21. "TMDL" means total maximum daily load.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VDH" means the Virginia Department of Health.
25. "VPDES" means Virginia Pollutant Discharge Elimination System.
26. "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. DTF owns and operates two wastewater treatment plants at the Facility. One plant is a process wastewater treatment plant and the second plant is a sanitary wastewater treatment plant. The process wastewater plant discharges through internal Outfall 101 and the sanitary wastewater plant discharges through internal Outfall 102. Both Outfalls 101 and 102 ultimately discharge to the James River via Outfall 001. These plants operate under VPDES Permit No. VA0003077. The Permit allows DTF to discharge treated sewage and other industrial wastes from the Facility, in strict compliance with the terms and conditions of the Permit.
2. Under normal circumstances the James River is the receiving body (James River Basin (Lower James River Subbasin)). During the 2010 305(b)/303(d) Water Quality Assessment, the James River was considered a Category 5A water ("A Water Quality Standard is not attained. The water is impaired or threatened for one or more designated uses by a pollutant(s) and requires a TMDL (303d list).") The Aquatic Life Use is impaired due to inadequate submerged aquatic vegetation (SAV), low dissolved oxygen, and high chlorophyll a. The Recreation Use is impaired due to E. coli. The Fish Consumption Use is impaired due to a VDH advisory for Polychlorinated biphenyls ("PCBs"). The Fish Consumption Use also has several non-impairing observed effects - arsenic and mercury due to fish tissue screening value exceedances and kepone due to a VDH advisory. The Public Water Supply and Wildlife Uses are fully supporting. The James River is considered a Tier 1 water and is not proposed for Tier 3 designation.
3. DTF was included in the Chesapeake Bay TMDL, which was approved by the EPA on 12/29/2010. The Facility is included in the aggregated wasteload allocations for total nitrogen, total phosphorus, and total suspended solids for non-significant wastewater dischargers in the upper tidal freshwater James River estuary (JMSTF2). In addition, the Facility was addressed in the James River and Tributaries – City of Richmond Bacterial TMDL, which was approved by the EPA on 11/4/2010. The Facility was assigned an E. coli wasteload allocation of 1.74E+12 cfu/year.
4. On December 16, 2011, DTF's consent order, containing interim five day biochemical oxygen demand ("BOD₅") limits, became effective. DTF requested the December 16, 2011, consent order, as DTF is converting the manufacturing facility to only utilize its terephthalic acid manufacturing process, and needed less stringent BOD₅ limits than DTF's permit limits until the installation of upgrade or replacement for the terephthalic acid process is complete.
5. On November 29, 2012, DTF notified DEQ staff that it was going to bleach its aeration basins on November 30, 2012, in an effort to remove filamentous growth that was inhibiting settling capabilities.
6. On December 12, 2012, DTF notified DEQ staff that it had exceeded its Permit limit for BOD₅ for December 6, 2012, at Outfall 101.
7. On December 19, 2012, DTF notified DEQ staff that it had exceeded its Permit limit for BOD₅ for December 13, 2012, at Outfall 101.

8. In submitting its DMRs, as required by the Permit, DTF indicated that it exceeded discharge limitations contained in the December 16, 2011, order for BOD₅, during the month of December, 2012, at outfall 101. DTF indicated that it believed the exceedances from the process wastewater treatment plant were due to the bleaching event on November 29, 2012. DTF indicated in its January 9, 2013, letter that DTF used the recommended dose of bleach, however, it became clear this dose was too high. DTF subsequently reseeded with seed sludge from Park 500.
9. On February 7, 2013, PRO issued NOV No. W2013-02-P-0003 to DTF for the December 2012, exceedances.
10. On March 8, 2013, Department staff met with representatives of DTF to discuss the violations in the February 2013, NOV.
11. On April 5, 2013, DTF notified DEQ staff that it had exceeded its Permit limits for BOD₅ and TSS for March 28, 2013, at Outfall 101.
12. In submitting its DMRs, as required by the Permit, DTF indicated that it exceeded discharge limitations contained in the December 16, 2011, order for BOD₅, during the month of March, 2013, at outfall 101. DTF indicated that it believed the exceedances from the process wastewater treatment plant were due to increased foam in the aeration basins. DTF indicated in its April 10, 2013 letter that it was continuing to determine the cause of the foam and was adding seed sludge from Park 500 daily to the aeration basin and removing sludge to rectify the problem.
13. In submitting its DMRs, as required by the Permit, DTF indicated that it exceeded discharge limitations contained in Part I.A of the Permit, for total suspended solids ("TSS"), during the month of March, 2013, at outfall 101. DTF indicated that it believed the exceedances from the process wastewater treatment plant were due to increased foam in the aeration basins. DTF indicated in its April 10, 2013 letter that it was continuing to determine the cause of the foam and was adding seed sludge from Park 500 daily to the aeration basin and removing sludge to rectify the problem.
14. On April 12, 2013 DTF notified DEQ staff that it had exceeded its Permit limit for BOD₅ and TSS for April 4, 2013, at Outfall 101.
15. On April 18, 2013, DTF notified DEQ staff that it had exceeded its Permit limit for BOD₅ for April 11, 2013, at Outfall 101 and that DTF expected to exceed its monthly BOD₅ limit for April, 2013 at Outfall 101.
16. In submitting its DMRs, as required by the Permit, DTF indicated that it exceeded discharge limitations contained in the December 16, 2011, order for BOD₅, during the month of April, 2013, at outfall 101. DTF indicated that it believed the exceedances from the process wastewater treatment plant were a continuation of the upset in March 2013,

that resulted in foam in the aeration basins, as it took substantial effort and time for the system to recover.

17. In submitting its DMRs, as required by the Permit, DTF indicated that it exceeded discharge limitations contained in Part I.A of the Permit, for TSS, during the month of April, 2013, at outfall 101. DTF indicated that it believed the exceedances from the process wastewater treatment plant were a continuation of the upset in March 2013, that resulted in foam in the aeration basins, as it took substantial effort and time for the system to recover.
18. On May 16, 2013, PRO issued NOV No. W2013-05-P-0005 to DTF for the March and April, 2013, exceedances.
19. On May 22, 2013, DEQ staff conducted a compliance inspection at the Facility. DEQ staff observed that monthly effluent data submitted for permitted outfall 102, beginning with the October 2011, monitoring period and continuing through the May 2013, monitoring period reported an E.coli average concentration of zero colonies per milliliter. A subsequent file review indicated DTF was not obtaining the monthly sampling and analysis for E.coli as required by the Permit for outfall 102. DEQ staff also observed that the chemical oxygen demand ("COD") analysis of effluent samples from permitted outfalls 003 and 901 were not performed by a laboratory accredited by the Virginia Environmental Laboratory Accreditation Program ("VELAP").
20. On June 19, 2013, Department staff met with representatives of DTF to discuss the violations in the May 2013, NOV.
21. On July 2, 2013, PRO issued NOV No. W2013-07-P-0002 to DTF for the Permit violations found during the May 22, 2013, inspection of the Facility.
22. On July 18, 2013, DTF notified DEQ staff that it had exceeded its Permit limit for BOD₅ for July 11, 2013, at Outfall 101.
23. On July 19, 2013, DTF notified DEQ staff that it had exceeded its Permit limit for TSS for July 11, 2013, at Outfall 102.
24. On July 23, 2013, DTF notified DEQ staff that it planned to pump and haul all flow from outfall 101 starting on July 29, 2013.
25. On July 29, 2013, DTF notified DEQ staff that it had exceeded its Permit limit for BOD₅ for July 18, 2013, at Outfall 101.
26. On July 29, 2013, DTF cut off all flow from outfall 101 and was pumping and hauling to the City of Hopewell Wastewater Treatment Facility. DTF decided to do this in order to be able to isolate which wastewater stream from the Facility is causing the upsets.

27. In submitting its DMRs, as required by the Permit, DTF indicated that it exceeded discharge limitations contained in the December 16, 2011, order for BOD₅, during the month of July, 2013, at outfall 101. DTF indicated that it believed the exceedances from the process wastewater treatment plant were due to the hotwell overflowing and discharging higher amounts of water into the effluent pit. DTF combated the levels by adding a scheduled dosage of seed sludge from Park 500 and reseeded the aeration basin.
28. In submitting its DMRs, as required by the Permit, DTF indicated that it exceeded discharge limitations contained in Part I.A of the Permit, for TSS, during the month of July, 2013, at outfall 102. DTF indicated that it had tested subsequent to the exceedance on July 11, 2013, and was again operating within the permitted limits.
29. On August 1, 2013, Department staff met with representatives of DTF to discuss the violations in the July 2013, NOV and the exceedances that were to be reported in the July DMR.
30. In submitting its DMRs, as required by the Permit, DTF reported a greater than quantity for E.coli rather than a discreet numerical quantity as required by the Permit for outfall 102 during the month of November, 2013. DTF indicated that this was due to lab difficulties with dilutions.
31. In submitting its DMRs, as required by the Permit, DTF reported a greater than quantity for E.coli rather than a discreet numerical quantity as required by the Permit for outfall 102 during the month of January, 2014. DTF indicated that this was due to continued lab difficulties with dilutions.
32. In submitting its DMRs, as required by the Permit, DTF indicated that it exceeded discharge limitations contained in Part I.A of the Permit, for TSS, during the month of February, 2014, at outfall 101.
33. In submitting its DMRs, as required by the Permit, DTF reported a greater than quantity for E.coli rather than a discreet numerical quantity as required by the Permit for outfall 102 during the month of March, 2014. DTF indicated that this was due to continued lab difficulties with dilutions.
34. On April 15, 2014, Department staff discussed with representatives of DTF that the greater than reporting of E.coli quantities fails to show compliance with Permit limits. DTF representatives indicated the lab would be producing numeric quantities and that a split sample may be utilized to ensure an exact number can be reported.
35. DTF's operating logs indicate that it discharged treated wastewater from the Facility every day from December 12, 2012, through March 31, 2014.

36. Va. Code § 62.1-44.5 states that except 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.
37. 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.
38. Va. Code § 62.1-44.31 states that “[i]t shall be unlawful for any owner to fail to comply with any special order adopted by the Board, which has become final under the provisions of this chapter. . . .”
39. Part I.A.4.a of the Permit requires monthly sampling and analysis for E.coli for discharges at outfall 102.
40. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
41. The Department has issued no other VPDES individual permits or certificates to DTF other than VPDES Permit No. VA0003077
42. The James River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
43. Based on the documentation submitted by DTF and the inspection, the Board concludes that DTF has violated the Permit, the Consent Order effective December 16, 2011, Va. Code § 62.1-44.5, Va. Code § 62.1-44.31 and 9 VAC 25-31-50, by discharging treated effluent from the Facility while concurrently failing to comply with the conditions of the Permit and the Consent Order, as described in the paragraphs above.
44. DTF has addressed all the reported exceedances described in the paragraphs above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders DTF and DTF agrees to:

1. Pay a civil charge of \$23,435.00 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

DTF 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, DTF 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 DTF for good cause shown by DTF, 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, DTF admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. DTF 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. DTF 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 DTF 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. DTF 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. DTF shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. DTF 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.

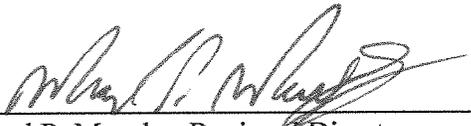
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement 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 DTF. Nevertheless, DTF 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 DTF has completed all of the requirements of the Order;
 - b. DTF 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 DTF.

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

And it is so ORDERED this 9th day of July, 2014.



Michael P. Murphy, Regional Director
Department of Environmental Quality

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DuPont Teijin Films U.S. Limited Partnership voluntarily agrees to the issuance of this Order.

Date: 5/1/2014 By: *Joseph S. Bourne* for Teijin-DuPont Films, Inc.,
(Person)

General Partner for DuPont Teijin Films U.S. Limited Partnership

Commonwealth of Virginia

City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 1st day of
May, 2014, by Joseph S. Bourne, for Teijin-DuPont Films, Inc., General Partner, on behalf of DuPont Teijin Films U.S. Limited Partnership, a limited partnership.

Mideri Ousey Stone
Notary Public

7503039
Registration No.

My commission expires: June 30, 2015

Notary seal:

