COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Doug Domenech
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
DUPLIN MARKETING, LLC
FOR
J.L. ROSE HOG TRANSFER FACILITY

Unpermitted Facility

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 Duplin Marketing, LLC, regarding the J.L. Rose Hog Transfer Facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.

SECTION B: Definitions

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

1. "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.

2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means the J.L. Rose Hog Transfer Facility located at 21360 Plank Road in Courtland, Virginia, which discharges industrial waste water from the hog transfer operation.

5. "Industrial storm water" means storm water runoff associated with the definition of 'storm water discharge associated with industrial activity' as defined by 9 VAC 25-151-10.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

7. "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.

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

9. "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.

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

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

12. "VAC" means Virginia Administrative Code.

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

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

15. "Duplin" means Duplin Marketing, LLC, an independent operating company of Smithfield Foods, Inc. which is a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Duplin is a "person" within the meaning of Va. Code § 62.1-44.3.

SECTION C: Findings of Fact and Conclusions of Law

1. Duplin operates the hog transfer operation at the Facility.

2. On April 8, 2010, DEQ compliance staff conducted an inspection at the Facility and observed an unpermitted discharge from a pipe at the Facility flowing into an unnamed tributary of the Nottoway River.

3. A review of DEQ files did not find a permit for Duplin to discharge industrial waste water from the Facility's hog transfer operation into state waters. Duplin failed to notify DEQ of the unpermitted discharge.

4. On September 7, 2010, TRO issued Notice of Violation No. W2010-09-T-001 to Duplin for the unpermitted discharge.

5. On September 23, 2010, DEQ staff met with Duplin personnel to discuss the unpermitted discharge and the NOV.

6. Va. Code § 62.1-44.5(A) 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 VPDES Regulation, at 9 VAC 25-31-50 (A), 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 § 62.1-44.5(B) states that "Any person in violation of the provisions of [Va. Code § 62.1-44.5(A)] who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters, or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of [DEQ], or the [local] coordinator of emergency services."

9. The VPDES Regulation, at 9 VAC 25-31-50(B), also requires that a person who discharges into state waters sewage, industrial wastes, or other wastes to notify DEQ within 24 hours of discovery of the discharge.

10. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

11. The Nottoway River is listed in DEQ's 305(b) report as impaired based on the fish consumption use due to a Virginia Department of Health fish consumption advisory for mercury. The cause of the impairment is atmospheric deposition of toxics and/or unknown. The unnamed tributary of the Nottoway River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

12. On March 3, 2011, Duplin capped the discharge pipe, eliminating the discharge to state waters and began pumping and hauling the waste water to the Murphy Brown Dory Farm for disposal under VPA Permit #VPA01075.

13. On May 18, 2011, DEQ issued a Certificate to Construct for a pump station/force main that will connect the Duplin waste water to the Courtland Wastewater Treatment plant; a permitted Publicly Owned Treatment Works (VPDES Individual Permit #VA0061859).

14. Based on the results of the April 8, 2010 inspection, the September 23, 2010 meeting and the documentation submitted by Duplin, the Board concludes that Duplin has violated the Va. Code and the VPDES Regulation, by discharging industrial wastes

from the Facility without a permit, and by failing to report the discharge as described in paragraphs C(2) and C(3), above.

15. As noted above, Duplin has documented that the unpermitted discharge into state waters has been eliminated; therefore, the violations as described in paragraphs C(2) and C(3), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Duplin, and Duplin agrees to pay a civil charge of $14,365.00 within 30 days of the effective date of this 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 shall be delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Duplin 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Duplin, for good cause shown by Duplin, 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 the purposes of this Order and subsequent actions with respect to this Order only, Duplin admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

    b. Duplin 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 Duplin.

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

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, Duplin voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23 day of September, 2011.

Maria R Hold
Regional Director
Department of Environmental Quality

Duplin Marketing, LLC voluntarily agrees to the issuance of this Order.

Date: 6/29/11 By: Ralph Albert Wofford, East Coast Manager
(Person) (Title)
Duplin Marketing, LLC

Commonwealth of Virginia NC

City/County of Lee

The foregoing document was signed and acknowledged before me this 29th day of June, 2011, by Ralph Albert Wofford who is East Coast Manager of Duplin Marketing, LLC, on behalf of Duplin Marketing, LLC.

Annette Davis Hall
Notary Public

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Registration No.

My commission expires: March 17, 2016

Notary seal:

ANNETTE DAVIS HALL
MY COMMISSION EXPIRES
NOTARY
PUBLIC
MARCH 17, 2016
LEE CO., NC