COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Douglas W. Domenech
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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.

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. 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 facility 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, that treats and discharges treated effluent from DTF's business operations under VPDES Permit No. VA0003077.

11. "O&M" means operations and maintenance.

12. "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.

13. "Permit" means VPDES Permit No. VA0003077, which was issued under the State Water Control Law and the Regulation to DTF on March 22, 2006 and expired on March 21, 2011. The Permit was administratively continued.

14. "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.

15. "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.

16. "PRO" means the Piedmont Regional Office of DEQ, located in Glenn Allen, Virginia.

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

21. "VAC" means the Virginia Administrative Code.

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

23. "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. 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 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. 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 BOD_5, during the month of January, 2010. DTF indicated that it believed the exceedances from the process wastewater treatment plant were due to an upset which caused the loss of a significant portion of the biomass. The cause of the upset was not determined.

4. 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 BOD_5, during the month of May, 2010. DTF indicated that it believed the exceedances from the process wastewater treatment plant were due to a change in the Bio-Plant clarifiers' settling, resulting in significant growth of filamentous bacteria which caused poor settling and sludge bulking in the clarifiers. DTF believed the resulting increase in solids in the final effluent caused the higher concentrations of BOD_5.

5. 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 BOD_5, during the month of June, 2010. DTF indicated that it believed the exceedances from the process wastewater treatment plant were due to increased organic loading at the Bio-Plant.

6. On July 28, 2010, PRO issued Warning Letter No. W2010-07-P-1007 to DTF for the January, May and June, 2010 BOD_5 exceedences.

7. Although not cited in a warning letter, 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 DO, during the month of July, 2010. DTF indicated that it believed the exceedances from outfall 001 were due to high air temperatures during July, and the dechlorination process which led to a reduction of oxygen in the water. The Facility reduced blowdown volumes on all site cooling towers to increase oxygen concentrations to normal.

8. 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 BOD_5, during the month of August, 2010. DTF indicated that it believed the exceedances from the process wastewater treatment plant were due to an upset of the treatment plant's biological population, most likely related to non-routine maintenance the week prior at the Polymer Plant.

9. On September 28, 2010, PRO issued Warning Letter No. W2010-09-P-1004 to DTF for the August 2010 BOD_5 exceedences.

10. Although not cited in a warning letter, 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 BOD_5, during the month of September, 2010. DTF indicated that it believed the exceedances from the process wastewater treatment plant were due to excessive rainfall which caused the Bio-Plant flow to exceed the desired values set by the Facility's flow controllers. Since the Permit limits are mass-based the extra flow contributed to the higher BOD mass discharged. DTF noted that the final outfall to the river remained in compliance with all applicable Permit limits for the month of September, 2010.

11. On May 11, 2011, Permit No. VA0003077 was administratively continued.

12. 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."

13. The Regulation, at 9 VAC 25-31-50, also states that "[e]xcept in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances . . .."

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

15. The Department has issued no permits or certificates to DTF other than VPDES Permit No. VA0003077

16. The James River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

17. Based on the documentation submitted by DTF the Board concludes that DTF has violated the Permit and Va. Code § 62.1-44.5 and 9 VAC 25-31-50 by discharging treated sewage and other wastes from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(3) through C(10), above.

18. DTF has addressed all reported exceedances as described in paragraph C(3) through C(10), above.

19. In order for DTF to return to compliance, DEQ staff and representatives of DTF 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 DTF and DTF agrees to:

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

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 to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.

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.

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 or officer 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 16th day of DECEMBER, 2011.

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: 08/22/11 By: _____ 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 22nd day of August, 2011, by Joseph S. Bourne, for Teijin-DuPont Films, Inc., General Partner, on behalf of DuPont Teijin Films U.S. Limited Partnership, a limited partnership.

Mildri Ousey Stone
Notary Public

7503039
Registration No.

My commission expires: My Commission Expires June 30, 2015

Notary seal:

NOTARY PUBLIC
MY COMMISSION NUMBER 7503039
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

DTF agrees to the following:

1. DTF anticipates that it will be unable to meet the more stringent BOD_5 effluent limits for internal Outfall 101 contained in the upcoming reissued Permit. Currently, DTF manufactures polyester resin at the Facility using two processes. The first process uses dimethyl terephthalate ("DMT") and the second process uses terephthalic acid ("TPA"). DTF is currently converting the Facility to only manufacture polyester resin from the process utilizing TPA. In order to ensure that the treatment scheme proffered in the concept engineering report referenced in paragraph 2 below is sufficient to ensure treatment of wastewater generated by the TPA manufacturing process to a level which will allow compliance with proposed BOD_5 effluent limits for Outfall 101, DTF must sample its industrial wastewater after it has fully converted its manufacturing processes to the TPA manufacturing method. Therefore DTF will, on or before January 1, 2013, fully complete the transition to solely using its TPA manufacturing process.

2. On or before August 1, 2013, DTF shall submit a concept engineering report that has been reviewed and approved by a P.E. The concept engineering report shall propose an upgrade or replacement of the industrial wastewater treatment train or plant, sufficient to ensure compliance with the BOD_5 effluent limitations for internal Outfall 101 and a construction schedule to perform the upgrade or replacement, to the DEQ contact listed below.

3. On or before August 1, 2014, DTF shall complete installation of the final P.E. approved upgrade or replacement and achieve compliance with the final permit effluent limits for BOD_5 at internal Outfall 101.

4. Until complete installation of the final P.E. approved design or until August 1, 2014, whichever occurs first, DTF shall continue to meet effluent limits for BOD_5 at internal Outfall 101 of a maximum loading of 11.6 kg/day and a monthly average loading of 4.4 kg/day.

5. DTF shall submit to the DEQ contact listed below, a status report, every six months from the effective date of this Order regarding the progress of the project.

DEQ Contact

Unless otherwise specified in this Order, DTF shall submit all requirements of Appendix A of this Order to:

Gina Pisoni
Enforcement Specialist
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5156
804-527-5106 (fax)
Gina.Pisoni@deq.virginia.gov