COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ENNIS PAINT, INC.
Expired Storm Water Registration No. VAR051550

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 Ennis Paint, Inc., regarding the Ennis Paint, Inc. Henrico County facility, for the purpose of resolving certain violations of the State Water Control Law and the 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. "Ennis" means Ennis Paint, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Ennis Paint, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.

5. "Facility" or "Plant" means Ennis Henrico County paint manufacturing facility located at 4400 Vawter Ave. in Henrico County, Virginia.

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. "Permit" means VPDES Industrial Stormwater Permit, which was issued under the State Water Control Law on July 1, 2004 and expired on June 30, 2009. Ennis applied for and received coverage under the 2004 Permit No. VAR051550 on August 31, 2004. That coverage expired on June 30, 2009, with the term of the 2004 Permit.

9. "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.

10. "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.

11. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

12. "Registration statement" means a registration statement for storm water discharges under 9 VAC 25-151-60.

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

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

15. "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.

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

17. "VAC" means the Virginia Administrative Code.

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

SECTION C: Findings of Fact and Conclusions of Law

1. Ennis owns and operates the Facility in Richmond, Virginia. Storm water runoff from the Facility flows into the stormwater basin at the site that drains to an unnamed tributary to Chickahominy River.

2. The unnamed tributary to Chickahominy River is located in the James River Basin (Lower). The tributary is assessed as fully supporting with observed effects for the Fish Consumption Use because it is included in the Virginia Department of Health fish consumption advisory for kepone. No other designated uses were assessed. Since the flow in the tributary is intermittent, it should be considered a Tier 1 water. The tributary is not currently addressed in any Total Maximum Daily Load plan.

3. On March 12, 2010, a representative of Ennis notified Department staff of a release of water contaminated with paint product to an unnamed tributary of the Chickahominy River. A representative of Ennis reported to the Virginia Department of Emergency Management that 800 gallons of paint product had leaked from the Facility building to the stormwater basin located at the Facility. The paint leak was due to a broken pipe inside the Facility. Paint product released from the broken pipe seeped through a crack in the outside wall of the Facility and flowed to the stormwater basin, a portion of which ultimately discharged to the unnamed tributary. Ennis has stated that excessive rains caused the basin to overflow, although no data has been submitted to support this statement.

4. Department staff conducted a compliance inspection of the Facility on the same date of the notification. While Department staff was at the Facility an environmental contractor arrived to plug the discharge pipe from the stormwater basin to prevent any further discharge to state waters and to pump the contaminated water out of the stormwater basin.

5. PRO issued Notice of Violation No. W2010-03-P-302 on March 23, 2010 for the unpermitted discharges to state waters as described above.

6. On April 5, 2010 the Department received a response to the NOV from Ennis. Ennis indicated that it would take or had taken the following corrective actions to prevent future unpermitted discharges: concrete curbing on the west side of the property would be extended to contain any future releases, flexible tubing on weigh tanks was replaced with iron piping, operating procedures were modified to ensure that weigh tanks will be emptied at the end of each shift, and cracks in the Facility building were repaired.

7. On April 20, 2010, the Department received a permit registration statement from GaiaTech, Ennis' consultant (GaiaTech), which the Department deemed incomplete. The Department informed GaiaTech, of the registration statement deficiencies on April 29, 2010. The Department has not received an updated and complete permit registration statement from Ennis to date. The Regulation requires submission of a complete permit registration statement by June 30, 2009 for coverage under the reissued 2009 Permit.

8. 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."

9. 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.

10. The Regulation, at 9 VAC 25-151-60.B.1, states that owners of facilities that were covered under the 2004 Industrial Storm Water General Permit who intend to continue coverage under this general permit shall submit a complete registration statement prior to July 1, 2009.

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

12. The Department has issued no permits or certificates to Ennis other than coverage under the 2004 Permit, as evidenced by Registration No. VAR051550, which expired on June 30, 2009.

13. The unnamed tributary of the Chickahominy River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

14. Based on the results of the March 12, 2010 inspection, a review of DEQ files, and the documentation submitted on April 5, 2010, the Board concludes that Ennis has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging contaminated water from the Facility as described in paragraph C(3), above and has violated 9 VAC 25-151-60.B.1 by failing to apply for coverage under the reissued 2009 Permit as described in paragraph C(7) above.

15. In order for Ennis to complete its return to compliance, DEQ staff and representatives of Ennis 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 Ennis, and Ennis agrees to:

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

2. Pay a civil charge of **$7,110** 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

Ennis 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 this Order with the consent of Ennis for good cause shown by Ennis , 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, Ennis admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.

4. Ennis 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. Ennis 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 Ennis 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. Ennis 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. Ennis shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Ennis 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 Ennis 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 Ennis. Nevertheless, Ennis 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. Ennis 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
    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Ennis.

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

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, Ennis Paint, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5th day of August, 2011.

Michael P. Murphy, Regional Director
Department of Environmental Quality

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Ennis Paint, Inc. voluntarily agrees to the issuance of this Order.

Date: 31 March 11 By: _____, Corporate EHS Manager
(Person) (Title)
Ennis Paint, Inc.

State/Commonwealth of Georgia
City/County of Carroll

The foregoing document was signed and acknowledged before me this 31st day of March, 2011, by _____ who is _____ of Ennis Paint, Inc., on behalf of the corporation.

_____
Notary Public

_____
Registration No.

My commission expires: 3/21/2014

Notary seal:

TIFFANY ANNE MILLER
NOTARY
EXPIRES
GEORGIA
MARCH 21, 2014
PUBLIC
CARROLL COUNTY

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Ennis shall install a valve on the discharge pipe from the stormwater basin so that the flow from the discharge pipe to state waters can be stopped if contaminated water enters the stormwater basin. Ennis shall install the valve **by no later than August 15, 2011.** Ennis shall submit notification to the Department of complete installation of the valve **by no later than September 1, 2011**.

2. Ennis shall submit photographs to the Department **by no later than September 1, 2011,** documenting the following has been completed: extension of concrete curbing on the west side of the property, flexible tubing on weigh tanks was replaced with iron piping, and cracks in the Facility building were repaired.

3. Ennis shall properly dispose of the wastewater from the tank farm containment area as required by Va. Code § 62.1-44.5 and 9 VAC 25-31-50. Ennis shall submit records and invoices that document the disposal of the wastewater from the tank farm containment area to the Department for the next **12** consecutive months, beginning with **July 2011 and ending with the June 2012** records. Ennis shall **submit the semi-annual disposal records by January 15, 2012 and July 15, 2012.** Ennis shall retain copies of records and invoices at the Facility for 3 years.

4. Ennis shall submit a complete permit registration statement to the Department **no later than August 15, 2011.**

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

Jennifer Hoeffner
Enforcement Specialist, Sr.
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5123
804-527-5106 (fax)
jennifer.hoeffner@deq.virginia.gov