



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO HAMMAKER EAST L.P. VPDES Permit No. VA0054330

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Hammaker, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

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

1. "Va. Code" means the Code of Virginia (1950), as amended.
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.
5. "Order" means this document, also known as a Consent Special Order.
6. "Hammaker" means Hammaker East L.P., a limited partnership registered in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility or Site" means the asphalt emulsion plant owned and operated by Hammaker and located in Chesterfield County, Virginia.

8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "Permit" means VPDES Permit No. VA0054330, which became effective August 26, 2003, and expires August 25, 2008.

SECTION C: Findings of Fact and Conclusions of Law

1. Hammaker owns and operates an asphalt emulsion plant (Facility) in Chesterfield County, Virginia. This Facility is the subject of VPDES Permit No. VA0054330 (Permit), which allows Hammaker to discharge uncontaminated stormwater and boiler steam condensate into an unnamed tributary of the James River in strict compliance with terms, limitations and requirements outlined in the permit. The tributary flows through Fort Darling National Park prior to discharge into the James. Wastewater is treated on site by an oil/water separator.
2. On November 13, 2007, the Department received a call from an officer of the Fort Darling National Park Service, who reported large (2x5 feet) pillows of foam and milky colored water in the unnamed tributary flowing through the Park. Department staff investigated and determined that the discharge had originated at the Hammaker Asphalt Plant at 7600 Fort Darling Road.
3. Department staff met with Hammaker staff who stated that a tank containing a copolymer called Poly Styrene-Co-Butadiene was drained and cut into pieces for demolition. Approximately 50 gallons of copolymer remaining in the tank was discharged onto the ground in the bermed containment area. The spilled material was then diluted with several thousand gallons of potable water, the containment area valve was opened, and the wastewater was discharged through the oil and water separator to the stream. An MSDS sheet indicates that Poly Styrene-Co-Butadiene contains alcohol, styrene, and butadiene and is slightly acidic. An analysis of the discharge conducted by Hammaker personnel indicated a pH of 5.86.
4. Va. Code § 62.1-44.5 A and VPDES Permit Part II F. prohibits the discharge of sewage, industrial wastes, other wastes, or any noxious or deleterious substances except as authorized by a permit or a certificate issued by the State Water Control Board. Permit Part I A. 11 requires Hammaker to maintain a pH between 6.0 and 9.0. Permit Part I A. 3. states that there shall be no discharge of floating solids or visible foam. In addition Permit Part I B. 2. states that any and all product, materials, industrial wastes, and/or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, and/or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, and/or stored in such a manner so as not to permit a discharge of such product, materials, industrial wastes, and/or other wastes to State waters, except as expressly authorized.

5. On November 14, Department staff revisited the Hammaker site. During the inspection Department staff noticed that Hammaker's pH meter had not had an annual maintenance check contrary to Permit Part II A. 3., and that monitoring records and calibration logs were not maintained as required in Permit Part II B.
6. On December 6, 2007, the Department issued an NOV to Hammaker East citing it for the discharge, the failure to report the discharge, and failure to maintain monitoring and calibration records.
7. On January 16, 2008, the Department met with Hammaker East to discuss the NOV and the violations. Hammaker stated that the discharge was an accident and not don intentionally. On November 13, 2008, Hammaker staff member mistakenly based the decision to discharge the Poly Styrene-Co-Butadiene after he checked the materials MSDS sheet and compared it to the effluent limits page of the Permit. Based on the comparison, the Hammaker staff member felt that the spilled material did not contain any constituents that would cause the discharge to be out of compliance with the Permit, even though the pH of 5.86 was lower than the permit allowed. Hammaker staff now understands that the Permit only allows the discharge of uncontaminated stormwater and boiler steam condensate. During the meeting, Hammaker stated that they do not have a current Stormwater Pollution Prevention Plan (SWPPP) which is required by the Permit in Part I D.
8. Hammaker's pH reading of 5.86 and the fact that poly styrene-co-butadiene has a pH over 4.5 appear to indicate that there may be other factors contributing to the low pH readings found on and off site several days after the discharge. Hammaker has agreed to conduct an analysis to determine other potential sources of the low pH.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Hammaker, and Hammaker agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Hammaker, and Hammaker voluntarily agrees, to pay a civil charge of \$11,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for Hammaker. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

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

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Hammaker, for good cause shown by Hammaker, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Hammaker by DEQ on December 6, 2007. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. In the interest of resolving this matter without delay and expense of litigation Hammaker agrees to the entrance of this Consent Order, and admits the jurisdictional allegations of the Order but neither admits nor denies the Findings of Fact or the Conclusions of Law herein.
4. Hammaker 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. Hammaker declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 enforce this Order.
6. Failure by Hammaker 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. Hammaker 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. Hammaker shall

show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hammaker shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order as set forth in Appendix A. 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 within 24 hours of learning of any condition above, which Hammaker 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 Hammaker. Notwithstanding the foregoing, Hammaker 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. Hammaker 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 notice to Hammaker.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Hammaker from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Hammaker voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of April 29, 2008.

Richard F. Weeks Jr Gerard Seeley, Jr., Regional Director
Department of Environmental Quality

Hammaker voluntarily agrees to the issuance of this Order.

By: Jeffrey A. Statler

Date: December 9, 2008

Commonwealth of Virginia

City/County of Chesterfield County

The foregoing document was signed and acknowledged before me this 9th day of

December, 2008, by Jeffrey A. Statler, who is
(name)

President of Hammaker, on behalf of the Partnership.
(title)

Candace D. Eckhardt
Notary Public

My commission expires: _____

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Candace D. Eckhardt, Notary Public
Greene Twp., Franklin County
My Commission Expires June 25, 2010
Member, Pennsylvania Association of Notaries

APPENDIX A

1. Within 45 days of the issuance of this Order, Hammaker must submit to the Department for review a modified stormwater pollution prevention plan (SWPPP) for the Facility. The SWPPP must be implemented immediately and a copy kept on-site and available at DEQ's request. Should the Department discover deficiencies in the SWPPP, Hammaker must make corrections or changes within 2 weeks of notification from the Department.
2. Upon issuance of this Order, Hammaker must conduct pH analysis and visual examinations of the unnamed tributary during rain events and discharges at a location between 15 and 25 feet downstream of the designated outfall pipe. Results shall be compiled monthly and submitted to the Department by the 10th day of the month following the analysis. This requirement will continue until the Order is closed by the Department.
3. Conduct a study or in-house investigation to determine potential on-site alternative sources of the low pH associated with the November 13th discharge event. Within 45 days of the issuance of this Order, submit to the Department for review a report on potential causes of the low pH with supporting documentation. If further remediation of the Facility is required, the report must include a plan and schedule, subject to Department approval. Upon DEQ approval, Hammaker must implement the remediation plan immediately. Should the Department discover deficiencies in the study, or the remediation plan and schedule (if required), Hammaker must make corrections or changes within 2 weeks of notification from the Department.

Pursuant to this Order communications regarding this Appendix shall be addressed as follows:

Frank Lupini
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
felupini@deq.virginia.gov

Hammaker shall confirm, in writing, completion of the Appendix requirements to the above address **within five (5) days of completion**.