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

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO OMEGA PROTEIN, INC. Registration No. 40278

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Omega Protein, Inc., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, the applicable permits and regulations.

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 Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.

2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

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. "Facility" means the Omega Protein, Inc. fish processing facility, located at 610 Menhaden Road in Reedville (Northumberland County), Virginia.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

7. "2007 NSR Permit" means a New Source Review permit to modify and operate a fish processing facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Omega on November 15, 2007.

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

9. "Omega" means Omega Protein, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Omega is a "person" within the meaning of Va. Code § 10.1-1300.

10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.

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

12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.

13. "Title V Permit" means the Title V Operating permit to operate a fish processing facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Omega on January 30, 2007.

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

15. "VAC" means the Virginia Administrative Code.

16. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

17. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (*see* 40 CFR 60, Appendix A).

SECTION C: Findings of Fact and Conclusions of Law

1. Omega owns and operates a fish processing facility located at 610 Menhaden Road, in Reedville (Northumberland County), Virginia.

2. The Facility is the subject of the Title V Permit and the 2007 NSR Permit which allow emissions of certain pollutants to the air during the operation of the fish processing facility.

3. On July 23, 2009, Department staff conducted a Full Compliance Evaluation (inspection) of the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Title V Permit, 2007 NSR Permit, and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

   a. Department staff noted there was a large amount of scrubber packing material in proximity to scrubbers 1R-S1 and S2, 5-S1 and S2, and MC1-S2. During the inspection Omega staff reported that the packing material was removed from the scrubbers during the 2008 off-season.

      Conditions III.A.1 and IV.A.1 of the Title V Permit require PM emissions from the fish meal dryer 1R and fish meal cooler MC1 be controlled by the use of cyclones and scrubbers.

   b. Omega failed to maintain and operate scrubbers R-S1 and S2, 5-S1 and S2, and MC1-S2 in a manner consistent with air pollution control practices for minimizing emissions.

      Condition VII.O of the Title V Permit, 9 VAC 5-50-20(E), and 9 VAC 5-40-20(E) require Omega to maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions.

   c. Omega did not notify the Department about the deviation and the malfunction associated with the removal of the packing material in scrubbers 1R-S1 and S2, 5-S1 and S2, and MC1-S2.

      Conditions VII.E and VII.F of the Title V Permit require Omega to notify the Department verbally within 4 hours of a deviation or malfunction and in writing within 14 days of the discovery.

   d. The 2nd 2008 Semi-annual Monitoring Report (SAMR) and the 2008 Annual Compliance Certification (ACC), submitted on March 4 & 5, 2009 by Omega did not document the removal of the scrubber media from scrubbers 1R-S1 and S2, 5-S1 and S2, and MC1-S2 or the failure to conduct performance testing as deviations from the Title V Permit, potential conditions of intermittent compliance or as incidents of non-compliance for each condition.

      Conditions VII.C.3 and VII.D of the Title V Permit requires documentation of deviations from the permit and any incidents of non-compliance in the SAMR and the ACC.

e. Omega failed to operate scrubbers R-S1 and S2, 5-S1 and S2, and MC1-S2 as stated in the permit applications submitted to the Department.

   Condition 1 of the 2007 NSR Permit requires Omega to operate the Facility as represented in the applications and other documents that it submitted to the Department.

f. Omega conducted performance testing on boilers BW1 and BW2 on July 23, 2009. The Title V Permit was issued on January 30, 2007. Testing was required to be conducted by July 30, 2008.

   Condition III.C.1 of the Title V Permit requires testing on boilers BW1 and BW2 within 18 months of initial issuance of the Title V Permit.

g. Department staff noted that the performance test was not conducted for steam dryers S1, S2, S3, fish meal flame dryers 1R and 5, and fish meal cooler MC1 as exhausted to Vent Stack 1 and the performance test protocol was not submitted. Test protocol should have been submitted no later than May 31, 2008 and performance testing should have been conducted by July 30, 2008.

   Conditions IV.C.1 and IV.C.3 of the Title V Permit require that a test protocol be submitted 60 days prior to testing. Condition IV.C.1 of the Title V Permit requires that the performance test be conducted within 18 months of initial issuance of the Title V Permit.

h. Omega failed to submit a test protocol and failed to conduct performance testing for hydrogen cyanide emissions from the fish meal dryers (1R and 5) and the fish meal cooler (MC1) as exhausted from Vent Stack 1. The test protocol should have been submitted no later than May 31, 2008 and performance testing should have been conducted by July 30, 2008.

   Conditions VIII.2 and VIII.3 of the Title V Permit require test protocol be submitted 60 days prior to testing. Condition VIII.2 of the Title V Permit requires the performance test be conducted within 18 months of initial issuance of the Title V Permit.

4. Va. Code § 10.1-1322 states that failure to meet conditions of the permit is considered a violation.

5. 9 VAC 5-80-260(A)(1) and 9 VAC 5-80-1210(H) require the Facility to comply with all terms and conditions of the permits.

6. On September 24, 2009, based on the inspection and follow-up information, the Department issued Notice of Violation No. 09-08-PRO-400 to Omega for the violations described in paragraph C.3 a-h, C.4, and C.5 above.

7. On October 13, 2009, the Department received a written response to the NOV from Omega.

8. On November 5, 2009, Department staff met with representatives of Omega to discuss the violations, including Omega's written response.

9. Based on the results of the inspection, the November 5, 2009 meeting, and the documentation received on October 13, 2009, the Board concludes that Omega has violated Title V Permit conditions III.A.1, IV.A.1, III.C.1, IV.C.1, IV.C.3, VII.C.3, VII.D, VII.E, VII.F, VII.O, VIII.2 and VIII.3, NSR Permit condition 1, Va. Code §10.1-1322, 9 VAC 5-50-20(E), 9 VAC 5-40-20(E), 9 VAC 5-80-1210(H), and 9 VAC 5-80-260(A) (1), as described in paragraph C.3, C.4, and C.5, above.

10. In order for Omega to return to compliance, DEQ staff and representatives of Omega 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 §§ 10.1-1309 and -1316, the Board orders Omega, and Omega agrees to:

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

2. Pay a civil charge of **$22,045** 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

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

4. Omega 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. Omega declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution 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 Omega 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. Omega does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.

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. Omega 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. Omega shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Omega 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 Omega 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 Omega. Nevertheless, Omega 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. Omega 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 Omega.

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

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, Omega Protein, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26th day of March, 2010.

Richard F. Weeks, Regional Director
Department of Environmental Quality

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Omega Protein, Inc. voluntarily agrees to the issuance of this Order.

Date: 3/23/2010 By: Joe Kadi, Sr. VP of Operations
(Person) (Title)
Omega Protein, Inc.

Commonwealth of Virginia
City/County of Reedville/Northumberland

The foregoing document was signed and acknowledged before me this 23rd day of March, 2010, by Joe Kadi who is Sr. VP of Operations of Omega Protein, Inc., on behalf of the corporation.

Notary Public

Registration No.

My commission expires: June 29, 2013

Notary seal:

LINDSAY NICOLE HORNSBY
Notary Public, State of Texas
My Commission Expires
June 29, 2013

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Omega shall conduct testing in accordance with conditions 40 through 44 and 60 of its New Source Review permit dated February 23, 2009 (2009 NSR Permit). Testing shall be completed no later than July 15, 2010.

2. Omega shall conduct testing in accordance with 9 VAC 5-50-30. Omega shall:

   a. At least 30 days prior to testing, submit to DEQ for review and approval a test protocol for Sulfur Dioxides as exhausted by the boilers BW1 and BW2, using an appropriate EPA Reference Method. Testing shall be completed in accordance with the protocol, as approved by the DEQ Piedmont Regional Office. During the tests, Omega shall be required to operate the boilers BW1 and BW2, at a minimum of 80% of their maximum rated capacity.

   b. Arrange the details of the test with the Air Compliance Manager of DEQ's Piedmont Regional Office.

   c. Conduct testing no later than July 15, 2010.

   d. Submit the test results to DEQ's Piedmont Regional Office within 60 days after completion of the test.

3. Omega must submit a letter documenting that the following emission units have been permanently removed and/or dismantled from the Facility to the extent that they can no longer operate: fish meal flame dryers 1R and 5, meal cooler MC1. Omega must submit the letter no later than June 1, 2010.

4. Omega must amend its 2nd 2008 SAMR and its 2008 ACC to document the removal of the scrubber media from scrubbers 1R-S1 and S2, 5-S1 and S2, and MC1-S2, its failure to conduct performance testing in a timely manner. Omega must submit the amended SAMR and ACC by no later than June 1, 2010.

5. By no later than June 1, 2010, Omega shall develop and submit to the Department for review and approval, an operating and maintenance plan to include provisions for conducting and documenting inspections and maintenance of permitted equipment as well as all necessary recordkeeping requirements. Omega shall implement the plan immediately upon Department approval. Any plan amendments required by the Department shall be immediately implemented upon written notification. In addition, Omega shall notify the Department of any variation from the plan.

6. In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, Omega shall by its officers, sign and certify under penalty of

law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

7. Unless otherwise specified in this Order, Omega Protein, Inc. 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	Charles "Boots" King Air Compliance Manager VA DEQ – Piedmont Regional Office 4949-A Cox Road Glen Allen, Virginia 23060 804-527-5036 804-527-5106 (fax) charlesboots.king@deq.virginia.gov