



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

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Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO OMEGA PROTEIN, INC. *VPDES VA0003867*

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 Omega Protein, Inc., 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. "Omega or Omega Protein" means Omega Protein, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the Omega Protein fish processing and wastewater treatment system located in Reedville, Virginia.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "Permit" means VPDES permit No. VA0003867, which became effective December 2, 2005, and will expire December 1, 2010.
10. "O&M" means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. Omega Protein owns and operates a wastewater treatment facility in Northumberland County, Virginia. This Facility is the subject of VPDES Permit VA0003867, which allows Omega Protein to discharge treated wastewater into Cockrell's Creek and the Chesapeake Bay in strict compliance with terms, limitations and requirements outlined in the Permit.
2. A Consent Order was issued to Omega Protein on June 29, 2005, to address ammonia and toxicity permit effluent violations at outfall 002. The Order also incorporated the remaining requirements of a previous Order issued on March 26, 2003. The June 29, 2005, Order contained corrective actions and interim limits for ammonia and toxicity at outfall 002 and an interim limit for cyanide at outfall 006.
3. On November 14, 2006, the Department issued a Notice of violation (NOV) to Omega for failure to meet the Permit's ammonia limit at outfall 002 during the August and September 2006 monitoring periods. The August ammonia violation also exceeded the June 29, 2005, Order's interim limit. Failure to meet Permit limits is a violation of VA Code § 62.1-44.5 and failure to meet Order limits is a violation of § 62.1-44.31. In addition, Omega was cited for failure to submit a quarterly progress report on achieving compliance with final phosphorous limits required by Part I.B.16. of the VPDES Permit.
4. The Department discussed the NOV with Omega on December 6, 2006, and Omega stated that the ammonia violations were due in part to the breakdown of the system's ammonia stripper and a power outage that occurs at the Facility on occasion. Omega stated that it planned to examine the facilities spare parts inventory and install an automatic generator to maintain power to the critical portions of the treatment process in order to maintain compliance during power outages.

5. On June 15, 2007, Omega informed the Department that it had installed generators for backup power on the aerators of the wastewater treatment system lagoons.
6. On June 26, 2007, Omega informed the Department that it had purchased an inventory of spare parts for the ammonia stripper system. The parts on hand will allow Omega to facilitate system repairs within two days of failure.
7. On July 26, 2007, Department staff conducted a site visit and confirmed the installation of backup power and the purchase of spare parts for the ammonia stripper system.

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 Omega Protein, and Omega Protein voluntarily agrees, to pay a civil charge of \$27,900 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 Omega Protein. 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 Omega Protein, for good cause shown by Omega Protein, 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 Omega Protein by DEQ on November 14, 2006. 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 Omega Protein 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.

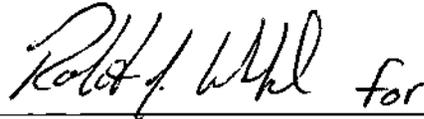
4. Omega Protein consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Omega Protein declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control 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 Omega Protein 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. Omega Protein 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 Protein shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Omega Protein shall notify the DEQ Piedmont Regional Office 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. 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 DEQ Piedmont Regional Office within 24 hours of learning of any condition above, which Omega Protein 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 Protein. Notwithstanding the foregoing, Omega Protein agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order will terminate effective upon the Department's receipt of the payment described herein. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Omega Protein 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, Omega Protein voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26th day of September, 2007.



Gerard Seeley, Jr., Regional Director
Department of Environmental Quality

Omega Protein voluntarily agrees to the issuance of this Order.

By: Graham Lyell Jett
Date: 7-30-2007

Commonwealth of Virginia

City/County of Northumberland

The foregoing document was signed and acknowledged before me this 30th day of

July, 2007, by Graham Lyell Jett, who is
(name)

General Manager of Omega Protein, on behalf of the Corporation.
(title)

Diane F. Saunders

Notary Public

Notary # 360980

My commission expires: July 31, 2009