COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
www.deq.virginia.gov

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
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 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. A civil charge of $5,500 was assessed. The Order also incorporated the remaining requirements of the Order issued on March 26, 2003. The 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 September 30, 2005, the Department issued a NOV to Omega for failure to meet the Order's interim limit for cyanide, and for BOD and TSS permit effluent violations during the June and July 2005 monitoring periods. A review of Omega's file indicates that it failed to submit a complete DMR for the January 2006 monitoring period in that Omega failed to report data at outfall 002 for fecal coliforms, total phosphorus, total nitrogen, TKN, and *Enterococci*.

4. Omega Protein is installing a cyanide treatment system which is to be in place and operational by September 1, 2006. The Department has not reviewed formal engineering plans for the system. This Order contains a requirement to submit formal plans and specifications. The Order also carries over the corrective action compliance deadline of September 1, 2006, for cyanide from the previous Order.

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 agrees, to perform the actions described in

Appendix A of this Order. In addition, the Board orders Omega Protein, and Omega Protein voluntarily agrees, to pay a civil charge of $16,500 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 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 10150
Richmond, Virginia 23240

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. 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 shall continue in effect until:

    a. Omega Protein 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 Omega Protein.

Termination of this Order, or of 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. This Order supersedes and cancels all prior Orders issued by the Board.

13. By its signature below, Omega Protein voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 6th day of September, 2006.

Gerard Seeley Jr.

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

Omega Protein voluntarily agrees to the issuance of this Order.

By: Graham Lyell Jett

Date: July 18, 2006

Commonwealth of Virginia
City/County of NORTHUMBERLAND

The foregoing document was signed and acknowledged before me this 18 day of

July, 2006, by GRAHAM LYELL JETT, who is
(name)

GENERAL MANAGER of Omega Protein, on behalf of the Corporation.
(title)

Deane F. Saunders
Notary Public

My commission expires: July 31, 2009.

APPENDIX A

Omega Protein shall:

1. On or before August 1, 2006, submit to the Department for its review and approval, a conceptual engineering report for the cyanide treatment system planned for the Facility.

2. On or before September 1, 2006, comply with the permit limit for cyanide at outfall 001.

3. On or before September 30, 2006, submit to the Department for review and approval a modified operation and maintenance manual incorporating the cyanide treatment system.

Pursuant to this Order, communications regarding this Order and its requirements shall be addressed as follows:

Frank Lupini
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060

Omega Protein shall confirm, in writing, completion of the Order's requirements to the above address **within five (5) days of completion**. Any plans or schedules submitted as part of this Order, once approved by the Department shall become an enforceable part of this Order.