



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2103

www.deq.virginia.gov

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT WITH EAST COAST BROKERS AND PACKERS, INC.

VPA Permit No. VPA01057

SECTION A: Purpose

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and East Coast Brokers and Packers, Inc., for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

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

1. “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 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 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. “ECBP” means East Coast Brokers and Packers, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Regulation” means 9 VAC 25-32-10 *et seq.* - the Virginia Pollutant Abatement (VPA) Permit Regulation.
8. “Permit” means VPA Permit No. VPA01057, issued on June 15, 2004 and which expires on June 14, 2014.
9. “VAC” means Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. ECBP owns and operates a centralized processing center for washing, packing and shipping tomatoes at 15141 Finney Mason Rd., Mappsville, Accomack (hereinafter referred to as the "Facility"). Wastewater is generated from the washing of the tomatoes. The Permit authorizes the ECBP to store and land apply wastewater and associated pollutants generated at the Facility through an irrigation system to 3.35 acres of common fescue grass. ECBP reports that an estimated 2.68 million gallons of wastewater is land applied per year. The Facility operates approximately 4 months of the year, July through October.
2. The Regulations and the Permit require that a permittee submit an application for VPA permit re-issuance 180 days prior to Permit expiration date. ECBP's application for re-issuance of the current Permit was due at DEQ no later than December 14, 2003; the application was received at DEQ on April 9, 2004.
3. Permit condition I.B.3 requires the Operations & Maintenance (“O & M”) Manual for the Facility wastewater treatment works/pollutant management system to be updated/revised within 90 days of the effective date of the Permit. The O & M Manual was due to be updated/revised by September 15, 2004; DEQ received the updated/revised Manual on February 28, 2005.
4. During a DEQ inspection on September 9, 2004, DEQ staff documented the following Permit compliance deficiencies:
 - a. Wastewater with tomato pieces was splashing from a screen onto the ground around a collection box; Section I.B.2 of the Permit specifies any and all product and other wastes shall be handled in a manner so as not to allow an unpermitted discharge of the products and wastes.
 - b. A pipe to the spray irrigation system was leaking, resulting in a small puddle of wastewater on the ground, and stormwater was being pumped from a parking lot onto the land application site; Section I.B.3 of the Permit requires compliance with the O & M Manual and implementation of Best Management Practices. Failure to repair the leaking pipe and application of stormwater to the land application site are not considered Best Management Practices.
 - c. Hand dug trenches were observed on the land application site; Section I.B.4 of the Permit specifies that the complete vegetative cover of grasses on the land application site not be disturbed.

- d. Land application records revealed that 2.93 inches of wastewater were applied the week of July 4-10, 2004, and 3.0 inches was applied the week of July 25-31, 2004; 22,400 gallons of wastewater per acre were applied in a single application on July 4, 2004. Land application rates were documented on a computer and not verified by a rain gauge; Section I.C.2 of the Permit specifies a maximum wastewater application rate of 2.0 inches per week and a maximum amount of 14,000 gallons per acre in a single application. Section I.C.2 of the Permit also specifies that land application rates be documented in a permanently bound log book and a rain gauge must be utilized to document rainfall amounts.
5. ECBP violated 9 VAC 25-32-60.B of the Regulations by failing to submit the VPA re-application within 180 days before the expiration date of the effective VPA permit.
6. ECBP violated Part I.B.3 of the Permit by failing to revise/update the O & M Manual by September 15, 2004.
7. ECBP violated Permit conditions Part I.B.2, B.3, B.4, and C.2 as noted in #4, above.
8. DEQ advised ECBP of the above referenced findings and applicable Permit and Regulatory citations by Notices of Violation: Nos. W2004-03-T-0002 (March 5, 2004), W2004-10-T-0005 (October 28, 2004), and W2004-12-T-0001 (December 8, 2004).

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders ECBP, and ECBP voluntarily agrees, to pay a civil charge of \$2,800.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include ECBP's Federal Identification Number and shall reference that it is being made as a requirement of this Order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, VA 23240

2. By May 15, 2005, ECBP shall submit to the attention of Francis L. Daniel, Director, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, certification in writing that the Permit compliance deficiencies listed in Section C.4.a through C.4.d of this Order have been corrected.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of ECBP, for good cause shown by ECBP, 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 above-cited Notices of Violation. 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 sewage treatment plant 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. For the purposes of this Order and subsequent actions with respect to this Order, ECBP admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. ECBP consents to venue in the Circuit Court of the County of Accomack for any civil action taken to enforce the terms of this Order.
5. ECBP 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 ECBP 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. ECBP 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. ECBP shall show that such circumstances were beyond its control and not due to a lack of good

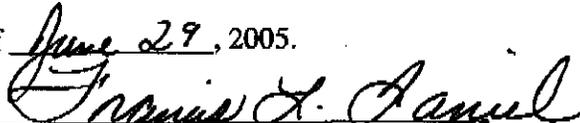
faith or diligence on its part. ECBP shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- 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.

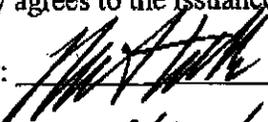
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which ECBP intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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 ECBP. Notwithstanding the foregoing, ECBP agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to ECBP. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve ECBP 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, ECBP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 29, 2005.


Francis L. Daniel, Tidewater Regional Director for
Robert G. Burnley, Director
Department of Environmental Quality

East Coast Brokers and Packers, Inc. voluntarily agrees to the issuance of this Order.

By:  _____

Date: 4/25/05 _____

~~State of Florida~~ FLA
City/County of POIK

The foregoing document was signed and acknowledged before me this 25 day of
April, 2005, by BATISTA MADRUGA Sr, who is
name

PRESIDENT of East Coast Brokers and Packers, Inc., on behalf of the corporation.
title

Connie Sue McGhee
Notary Public

My commission expires: 6-6-06



Connie Sue McGhee
Commission # DD112829
Expires June 6, 2006
Bonded Thru
Atlantic Bonding Co., Inc.