



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

5636 Southern Boulevard
Virginia Beach, VA 23462
www.deq.state.va.us

Robert G. Burnley
Director

Francis L. Daniel
Tidewater Regional Director
(757) 518-2000

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

EASTERN SHORE SEAFOOD PRODUCTS, INC.

VPA Permit No. VPA01060

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Eastern Shore Seafood Products, 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. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means 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. "ESSP" means Eastern Shore Seafood Products, Inc.
7. "Regulation" means 9 VAC 25-32-10 *et seq.* - the Virginia Pollution Abatement (VPA) Permit Regulation.

8. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
9. "Permit" means VPA Permit No. VPA01060, which became effective August 29, 1994 and expired August 29, 2004.

SECTION C: Finding of Facts and Conclusions of Law

1. Eastern Shore Seafood Products, Inc. owns and operates a clam processing and canning facility located at 13249 Lankford Highway, in Accomack County, Mappsville, Virginia (hereinafter referred to as the "ESSP facility"). ESSP is subject to the Permit, which was issued on August 29, 1994, and expired on August 29, 2004. The Permit was reissued on March 9, 2005, and expires on March 8, 2015. The Permit authorizes ESSP to store and land apply treated wastewater via spray irrigation.
2. On April 7, 2004, DEQ inspection staff noticed uncharacteristic conditions in the Petit Branch water body. DEQ staff conducted an inspection of the ESSP facility and documented a discharge running off the irrigation field, into a ditch, which flows to Petit Branch. DEQ inspection staff stated that at the time of the inspection weather conditions were clear and a 25 year, 24 hour storm event had not occurred.
3. On April 7, 2004, DEQ received a faxed letter from ESSP providing notification of the unauthorized discharge. ESSP estimates approximately 4,000 to 5,000 gallons of effluent was discharged into Petit Branch. Reportedly, upon discovery of the discharge, ESSP staff attempted to stop the discharge by placing a berm on the field. ESSP stated that between 5:00 pm on April 6, 2004 and 7:00 am on April 7, 2004 the valve to pivot No. 14 failed; allowing effluent to run while the pivot was stationary, causing a buildup of water. The buildup of water was the source of the runoff to Petit Branch.
4. DEQ water quality staff collected samples from the Petit Branch on April 6, 2004, as part of a routine biological monitoring run. The sampling point was approximately one half mile downstream from the point of the observed discharge, which occurred at the ESSP facility. DEQ inspection staff also collected samples from the facility and from the same sampling point on April 7, 2004, as part of their inspection and investigation. Comparison of the data indicates the samples from April 7, 2004 had significantly elevated levels of several pollutants, including total suspended solids ("TSS"), phosphorous, ammonia, nitrogen, and biochemical oxygen demand ("BOD₅") than the sample results from April 6, 2004 as follows:

| Date Sampled | Location sampled | TSS mg/l | Phosphorous mg/l | Ammonia mg/l | Nitrogen mg/l | BOD ₅ mg/l |
|---------------|------------------------|-------------|---------------------|-----------------|------------------|--------------------------|
| April 6, 2004 | DEQ Monitoring Station | 12 | 0.1 | 0.14 | 1.4 | 2 |
| April 7, 2004 | DEQ Monitoring Station | 80 | 40.6 | 0.28 | 5.4 | 21 |
| April 7, 2004 | ESSP Facility | 111 | 77.4 | 1.28 | 8.9 | 23 |

5. Part I.B.1 of the Permit prohibits the discharge of pollutants to surface water except in the case of a 25 year, 24 hour storm event. Part III.T of the Permit prohibits the discharge of pollutants except in compliance with the Permit. ESSP violated its Permit by discharging pollutants to surface water at the ESSP facility on or about April 7, 2004.
6. On May 19, 2004, DEQ issued Notice of Violation ("NOV") W2004-05-T-001 to ESSP, advising ESSP of the observed discharge and applicable regulatory and permit citations.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d), orders ESSP, and ESSP agrees to comply with the Permit. In addition, the Board orders ESSP, and ESSP voluntarily agrees to pay a civil charge of \$8,000 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include ESSP's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, 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 ESSP, for good cause shown by ESSP, 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 referenced 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 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. For purposes of this Order and subsequent actions with respect to this Order, ESSP neither admits nor denies the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. ESSP 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.
5. Failure by ESSP 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.
6. 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.

7. ESSP shall be responsible for failure to comply with any of the terms and conditions by this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. ESSP shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ESSP 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 ESSP 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.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and ESSP. Notwithstanding the foregoing, ESSP agrees to be bound by any compliance date, which precedes the effective date of this Order.
10. 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 ESSP. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve ESSP from its obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. By its signature below, ESSP voluntarily agrees to the issuance of this Order.

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

Francis L. Daniel

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

Eastern Shore Seafood Products, Inc. voluntarily agrees to the issuance of this Order.

By: [Signature]

Date: April 26th 2005

Commonwealth of Virginia
City/County of Accomack

The foregoing document was signed and acknowledged before me this 26th day of

April, 2005, by Arthur J. Myers III, who is
(name)

President
(title) of Eastern Shore Seafood Products, Inc., on behalf of ESSP.

[Signature]
Notary Public

My commission expires: My Commission Expires Nov. 30, 2006