

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

### **SPECIAL ORDER BY CONSENT WITH ELIZABETH RIVER TERMINALS, LLC. Permit No. VA0081418**

#### **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 Elizabeth River Terminals, LLC. 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 the 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 the 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. “ERT” means Elizabeth River Terminals, LLC. certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “Regulations” means 9 VAC 25-31-10 *et seq.* - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
9. “Permit,” means VPDES Permit No. VA0081418.

## **SECTION C: Findings of Fact and Conclusions of Law**

1. ERT owns and operates Kinder Morgan Elizabeth River Terminals, located on 4100 Buell Street, Chesapeake, Virginia. This facility is the subject of the Permit, which became effective August 8, 1999 and expires August 8, 2004. The Permit allows ERT to discharge to the Southern Branch of the Elizabeth River.
2. Section 62.1-44.5.A of the Code, Section 9 VAC 25-31-50.A.1 of the Regulations, and Part II.F of the Permit state: "Except in compliance with a permit...issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
3. Section 62.1-44.5.B of the Code, §9 VAC 25-31-50.B of the Regulations, and Part II.G of the Permit state any person/permittee "who discharges or causes or allows a discharge of sewage, industrial wastes, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II.F, shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery."
4. Part I.6 of the Permit, Materials Handling and Storage, states: "Any and all product, materials, ...and/or other wastes resulting from the purchase, sale... transport, preparation and/or storage of raw or intermediate materials, final product, ...shall be handled, disposed of and/or stored in such a manner so as not to permit a discharge of such product, materials, to State waters, except as expressly authorized."
5. Part I.D.6(c)(1) of the Permit, Good Housekeeping, states: "Good housekeeping requires the maintenance in a clean, orderly manner, of areas which may contribute pollutants to storm water discharges."
6. Part I.D.6(c)(5) of the Permit, Employee Training, states: "Employee training programs shall be developed to inform personnel, responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management, of the components and goals of storm water management, of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. The pollution prevention plan shall identify periodic dates for such training."
7. Part I.D.6 (d) of the Permit, Comprehensive Site Compliance Evaluation, states: "Qualified facility personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year during the permit term."
8. On August 5, 2002, DEQ Compliance staff (Staff) inspected ERT and observed ERT unloading pelletized urea from a vessel. The pelletized urea was spilling from the clamshell bucket and unpaved pier into the Elizabeth River as it was being offloaded from the vessel. DEQ had not been notified of this discharge.
9. On August 15, 2002, Staff inspected ERT and observed ERT employees washing a barge, which had previously unloaded ammonium sulfate from a vessel. The ammonium sulfate residue on the barge was being washed off into the river. DEQ had not been notified of this discharge.

10. On October 8, 2002, Staff conducted an inspection of ERT and observed significant quantities of exposed product (unknown) on the pier and the surrounding area located around the conveyor belts. Best management practices were not implemented to prevent the product from entering the river. Staff did not observe a discharge during this inspection.
11. ERT's storm water pollution prevention plan (SWP3) does not list the pollution prevention team members with respective responsibilities, housekeeping procedures, and employee-training records. On January 9, 2003, ERT submitted a revised SWP3, which was still deficient in these areas. On October 8, 2002, ERT admitted they have not performed a comprehensive site compliance evaluation as required by the Permit.
12. On September 19, 2002, DEQ issued Notice of Violation (NOV) No. W2002-09-T-0003 to ERT for an unauthorized discharge and failure to report the discharge.

#### **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 ERT, and ERT agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders ERT, and ERT voluntarily agrees, to pay a civil charge of \$20,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include ERT's Federal Identification Number. 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, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of ERT, for good cause shown by ERT, 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 ERT by DEQ on September 19, 2002. 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, ERT admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. ERT 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. ERT 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 ERT 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 unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. ERT 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. ERT shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ERT 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 the parties intend 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 ERT. Notwithstanding the foregoing, ERT agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until ERT 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.
12. By its signature below, ERT voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2003.

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

ERT voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia  
City/County of Chesapeake, VA

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2003, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of ERT, on behalf of the Corporation.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

## APPENDIX A

### Elizabeth River Terminals, LLC.

ERT shall:

1. Revise the SWP3 to include:
  - A. Specific best management practices (BMPs) used while loading and offloading vessels, the area surrounding the piers and all conveyor transfer points.
  - B. Specific housekeeping procedures in regards to the loading and offloading areas, the wash pad area, and the areas surrounding the conveyor belts at ERT. In addition, the housekeeping and maintenance practices of the salt piles and land plaster piles shall be included in the SWP3.
  - C. A comprehensive site compliance evaluation, which provides a summary of all the monthly inspections performed during the year.
2. By **July 1, 2003**, submit the revised SWP3 to this office for review and approval.
3. Revise the monthly storm water pollution prevention inspection form to specifically address each inspection area separately. At minimum, the inspection form must list each pier, barge, and water front area separately. The inspection form shall include inspections of each BMP to ensure their efficiency. If a BMP is found inefficient, the inspection form shall state the corrective action taken and the date it was implemented.
4. By **July 1, 2003**, submit the new inspection form to DEQ for approval. Upon approval, immediately implement the revised monthly storm water pollution prevention inspection form.
5. All submittals and reports required by this Appendix A shall be mailed to:

Francis L. Daniel  
Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462