COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ASB GREENWORLD, INC.
FOR
ASB GREENWORLD MATTAPONI PRODUCTION PLANT
VPDES Permit No. VAR05
Stormwater Registration No. VAR051378

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and ASB Greenworld, Inc., regarding the ASB Greenworld Mattaponi Production Plant, for the purpose of resolving certain violations of the State Water Control Law, the Regulation, and the above-referenced Permit.

SECTION B: Definitions

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

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

2. "ASB Greenworld" means ASB Greenworld, Inc., an international company registered to do business in Virginia. ASB Greenworld is a "person" within the meaning of Va. Code § 62.1-44.3.

3. "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.

4. "CSCE" means comprehensive site compliance evaluation.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

7. "Discharge" means the discharge of a pollutant.

8. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:

    a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

    b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

9. "DMR" means Discharge Monitoring Report.

10. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

11. "EPA" means Environmental Protection Agency.

12. "Facility" or "Site" means the ASB Greenworld Mattaponi Production Plant, located at Route 643 Airport Road in Mattaponi (King and Queen County), Virginia, from which discharges of storm water associated with industrial activity occur. ASB Greenworld applied for registration under the storm water general permit on February 5, 2010, and was issued registration No. VAR0513178.

13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

15. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2009 and which expires on June 30, 2014.

16. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as

amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water… 9 VAC 25-31-10.

17. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

18. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

19. "QVE" means quarterly visual examination.

20. "Registration statement" means a registration statement for coverage under a storm water general permit.

21. "Regulation" means the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10 *et seq.*

22. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

23. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

24. "SWP3" means Storm Water Pollution Prevention Plan.

25. "TMDL" means total maximum daily load.

26. "Va. Code" means the Code of Virginia (1950), as amended.

27. "VAC" means the Virginia Administrative Code.

28. "VPA" means Virginia Pollution Abatement.

29. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. ASB Greenworld operates the Facility located at Route 643 Airport Road in Mattaponi (King and Queen County), Virginia. ASB Greenworld manufactures and distributes horticultural products at the Facility.

2. The Permit allows ASB Greenworld to discharge storm water associated with industrial activity from the Facility to Goalders Creek, in strict compliance with the terms and conditions of the Permit.

3. Goalders Creek, a tributary of the York River is located in the York River Basin. During the 2010 305(b)/303(d) Water Quality Assessment, the receiving stream was assessed as a Category 5A water. The Aquatic Life Use is impaired due to low dissolved oxygen and inadequate submerged aquatic vegetation in the York mesohaline estuary. The Shellfishing Use is impaired due to a Virginia Department of Health shellfish consumption advisory. The Recreation, Fish Consumption, and Wildlife Uses were not assessed. ASB Greenworld was included in the Bacterial TMDL for the Upper York River, which was approved by the EPA on July 28, 2010 and by the Board on December 13, 2010. The facility was not assigned a wasteload allocation. The facility was not addressed in the Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010. The stream is not currently proposed for designation as a Tier 3 water. The Upper York River Shellfish TMDL considers the source of the bacteria to be nonpoint sources (*i.e.* livestock, wildlife, human straight pipes and leaking septic tanks, and pet waste) and the following point sources: Single family home residence VAG404212, HRSD West Point – VA0075434, and Parham Landing WWTP – VA0088331. The Chesapeake Bay TMDL states that the sources of the nutrients and total suspended solids are " Point sources of nitrogen, phosphorus, and sediment include municipal wastewater facilities, industrial discharge facilities, CSOs, SSOs, NPDES permitted stormwater (MS4s and construction and industrial sites), and CAFOs. Nonpoint sources include agricultural lands (AFOs, cropland, hay land, and pasture), atmospheric deposition, forest lands, on-site treatment systems, non-regulated stormwater runoff, stream-banks and tidal shorelines, tidal re-suspension, the ocean, wildlife, and natural background." (Chesapeake Bay TMDL Section 4, page 4-1) ASB Greenworld is not included on the list of identified point sources in this TMDL because industrial stormwater loads have been aggregated and have not been split up into loads for individual facilities at this point.

4. Part I.A.1.a of the Permit requires ASB Greenworld staff to conduct quarterly visual examinations (QVEs) of the quality of the storm water discharging from the Facility's outfalls.

5. Part I.A.5.a of the Permit requires review and modification of the SWP3 as necessary when test data exceeds benchmark concentrations.

6. Part I.B.5 of the Permit states: "There shall be no discharge of floating solids or visible foam in other than trace amounts."

7. Part II.A.2 of the Permit requires that monitoring be conducted according to procedures approved under 40 CFR Part 136 or an alternative EPA approved method.

8. Part III.E of the Permit requires a CSCE at least once a year.

9. Part III.B.6.b.(6) of the Permit requires implementation and documentation of a storm water training program.

10. Part I.A.2.c.of the Permit requires recordation of storm event data.

11. Part III.B.6. of the Permit requires maintenance of best management practices (BMPs).

12. During a DEQ file review and Facility inspection on May 19, 2010, DEQ staff documented the following compliance deficiencies with respect to the monitoring requirements of the Permit:

    a. No records could be provided indicating that quarterly visual monitoring of storm water discharges were being performed, as required by Part I.A.1.a of the Permit.

    b. No records could be provided regarding storm event data (*i.e.*, amount of precipitation, date and duration of storm event, rainfall total, and the duration between the storm event sampled and the end of the previous measureable storm event), as required by Part I.A.2.c of the Permit.

    c. Records provided by the permitted facility indicated that the permitted benchmark concentration for iron was exceeded during the January 27, 2010 sampling event and that no changes to the facility's SWP3 were documented as a result of the benchmark exceedance, as required by Part I.A.5.a of the Permit.

    d. A large amount of bark mulch materials and plastics (*i.e.*, product bags) were noted at the discharge pipe and downstream from the outfall of the permitted on-site storm water pond, contrary to Part I.B.5 of the Permit.

    e. The laboratory reported a zinc concentration of "<1 mg/L" for the January 27, 2010 stormwater sample event; however, the zinc benchmark listed in the Permit is 0.12 mg/L. This is contrary to procedures approved by EPA under 40 CFR Part 136 and required by Part II.A.2 of the Permit.

    f. No records could be provided regarding annual CSCEs, as required by Part III.E of the Permit.

    g. The storm water pond was not preventing the discharge of fugitive material from the Facility, contrary to Part III.B.6 of the Permit.

h. No records could be provided regarding an employee storm water training program, as required by Part III.B.6.b.(6) of the Permit.

13. On July 14, 2010, the Department issued NOV No. W2010-07-P-0001 for the Permit violations discovered during the Department inspection of May 19, 2010.

14. The Department met with a representative of ASB Greenworld on July 29, 2010, to discuss the compliance issues cited in the NOV. In response to the NOV, ASB Greenworld stated that for C.12.a & b above, inspections and sampling were conducted however the results were not documented to the extent required in the Permit. Regarding C.12.c, ASB stated that the SWP3 now addresses the fact that high iron is due to either a high concentration of iron in the upstream stormwater entering the facility or runoff from storage piles of product containing micro-nutrients or dyes that contain iron. ASB Greenworld responded to C.12.d & e by placing a screen over the pond discharge outlet, and contracting a laboratory with the instrumentation to detect zinc concentrations to 0.001 mg/L. ASB stated that miscommunication between staff and consultants led to the records failure in C.12.f & h. ASB Greenworld stated that a newly installed bailer and increasing the frequency of facility inspections has been implemented to correct fugitive materials mentioned in C.12.g.

15. On May 28, 2013, ASB Greenworld submitted an adjusted Stormwater Pollution Prevention Plan to the Department for review and approval.

16. The Facility's operating logs indicate that storm water was discharged from the Facility during rain events during 2010.

17. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate 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."

18. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.

19. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

20. The Department has issued coverage under no permits or certificates to ASB Greenworld other than the registration under VPDES Permit No. VAR05 to ASB Greenworld.

21. Goalders Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

22. Based on the results of the May 19, 2010 inspection and the July 29, 2010 meeting, the Board concludes that ASB Greenworld has violated the Permit, Va. Code § 62.1-44.5,

and 9 VAC 25-151-70, by discharging contaminated storm water from the Facility while concurrently failing to comply with the conditions of the Permit, as described above.

23. In order for ASB Greenworld to return to compliance, DEQ staff and ASB Greenworld have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders ASB Greenworld, Inc., and ASB Greenworld agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $10,535 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
October 15, 2013	$1317.00 or balance
January 15, 2014	$1317.00 or balance
April 15, 2014	$1317.00 or balance
July 15, 2014	$1317.00 or balance
October 15, 2014	$1317.00 or balance
January 15, 2015	$1317.00 or balance
April 15, 2015	$1317.00 or balance
July 15, 2015	$1316.00

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

ASB Greenworld shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, ASB Greenworld shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of ASB Greenworld for good cause shown by ASB Greenworld, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, ASB Greenworld admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.

4. ASB Greenworld 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. ASB Greenworld declares it has received fair and due process under the Administrative Process Act 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 modify, rewrite, amend, or enforce this Order.

6. Failure by ASB Greenworld 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. ASB Greenworld 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. ASB Greenworld shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ASB Greenworld shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days 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 verbally within 24 hours and in writing within three business days, of learning of any condition above, which ASB Greenworld 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 ASB Greenworld. Nevertheless, ASB Greenworld 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. The Director or his designee terminates the Order after ASB Greenworld has completed all of the requirements of the Order;

b. ASB Greenworld 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

c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to ASB Greenworld.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve ASB Greenworld from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by ASB Greenworld and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

14. By its signature below, ASB Greenworld voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2013.

_____

Michael P. Murphy, Regional Director
Department of Environmental Quality

ASB Greenworld, Inc. voluntarily agrees to the issuance of this Order.

Date: July 9, 2013 By: Raymond L Hogge, Plant Manager
(Person) (Title)
ASB Greenworld, Inc.

Commonwealth of Virginia
City/County of King William

The foregoing document was signed and acknowledged before me this 9th day of July, 2013, by Raymond L. Hogge who is Plant Manager of ASB Greenworld, Inc., on behalf of the corporation.

Linda G. Walton
Notary Public

#151181
Registration No.

My commission expires: 7/31/2014

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

Unpermitted Discharge/Spill/Benchmark Exceedance

1. Within 30 days of the issuance of this Order, ASB Greenworld shall respond to any comments or concerns with the updated Stormwater Pollution Prevention Plan (SWP3) submitted by ASB Greenworld on May 28, 2013. ASB Greenworld shall make adjustments to the SWP3 based on Department comments within the timeframe allowed in the accompanying correspondence.

2. Within 60 days of the issuance of this Order, ASB Greenworld shall provide documentation to the Department that Facility staff were trained on the updated SWP3. ASB Greenworld shall maintain records of the training at the Facility.

3. ASB Greenworld shall maintain records required by the Permit at the Facility for Department inspection.

QVEs, CSCE, and Storm Event Data

1. ASB Greenworld shall conduct QVEs in accordance with the Permit. ASB Greenworld shall submit the results of the next two QVEs to DEQ within five business days of each of the two QVE.

2. ASB Greenworld shall conduct a CSCE by August 30, 2013 and shall submit the results of the CSCE to DEQ by September 1, 2013.

3. ASB Greenworld shall collect storm event data in accordance with the Permit and shall submit the results of the next two events to DEQ within five business days of each event.

Analytical Methods

ASB shall use the analytical methods provided for in the Permit in the analysis of all samples from the Facility.

Additional Sampling

1. On July 1, 2014, the Permit will be reissued and will include provisions for Mulch, Wood, and Bark facilities. ASB Greenworld shall submit a complete and timely registration form for the reissued Permit. During the time period between the issuance of this Order and coverage under the reissued Permit, ASB Greenworld shall continue to follow the requirements of the Permit and will additionally sample, no later than

September 30, 2013, in accordance with the provisions of Part I of the Permit the following parameters:

Biochemical Oxygen Demand (BOD)
Chemical Oxygen Demand (COD)
Total Recoverable Aluminum
Total Recoverable Arsenic
Total Recoverable Cadmium
Total Recoverable Chromium
Total Recoverable Copper
Total Recoverable Iron
Total Recoverable Lead
Total Recoverable Manganese
Total Recoverable Mercury
Total Recoverable Nickel
Total Recoverable Selenium
Total Recoverable Silver
Total Recoverable Zinc
Total Nitrogen
Total Phosphorus

ASB Greenworld shall submit the results of this additional sampling to PRO, no later than October 15, 2013.

Should results from the additional sampling exceed the benchmark concentrations listed below, ASB Greenworld shall submit to PRO, for review and approval, no later than November 15, 2013, a revised SWPP which addresses actions to be taken by ASB Greenworld to reduce the referenced pollutants to levels below benchmark concentrations prior to December 15, 2013.

Biochemical Oxygen Demand (BOD)	30 mg/L
Chemical Oxygen Demand (COD)	120 mg/L
Total Recoverable Aluminum	750 µ/L
Total Recoverable Arsenic	150 µ/L
Total Recoverable Cadmium	2.1 µ/L
Total Recoverable Chromium	16 µ/L
Total Recoverable Copper	18 µ/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µ/L
Total Recoverable Manganese	64 µ/L
Total Recoverable Mercury	1.4 µ/L
Total Recoverable Nickel	470 µ/L
Total Recoverable Selenium	5 µ/L
Total Recoverable Silver	3.8 µ/L
Total Recoverable Zinc	120 µ/L
Total Nitrogen	2.2 mg/L

Total Phosphorus	2.0 mg/L

DEQ Contact

Unless otherwise specified in this Order, ASB Greenworld shall submit all requirements of Appendix A of this Order to:

Frank Lupini
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949A Cox Road,
Glen Allen, Virginia 23060
Frank.Lupini@deq.virginia.gov