Piedmont Regional Office
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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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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
DUPONT TEIJIN FILMS U.S. LIMITED PARTNERSHIP
FOR
DUPONT TEIJIN FILMS, HOPEWELL SITE
VPDES Permit No. VA0003077

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 DuPont Teijin Films U.S. Limited Partnership regarding the DuPont Teijin Films, Hopewell Site for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

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. "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, as described in Va. Code § 10.1-1185.

5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.

6. "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.

7. "DMR" means Discharge Monitoring Report.

8. "DTF" means DuPont Teijin Films U.S. Limited Partnership a limited partnership authorized to do business in Virginia and its affiliates, partners and subsidiaries. DTF is a "person" within the meaning of Va. Code § 62.1-44.3.

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

10. "Facility" means the wastewater treatment plant located at DuPont Teijin Films, 3600 Discovery Drive, Chesterfield, Virginia. The wastewater treatment plant facility is comprised of two treatment plants. One plant is a process wastewater treatment plant and the second plant is a sanitary wastewater treatment plant. The process wastewater plant discharges through internal Outfall 101 and the sanitary wastewater plant discharges through internal Outfall 102. Both Outfalls 101 and 102 ultimately discharge to the James River via Outfall 001. These plants operate under VPDES Permit No. VA0003077, that treats and discharges treated effluent from DTF's business operations under VPDES Permit No. VA0003077.

11. "O&M" means operations and maintenance.

12. "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.

13. "Permit" means VPDES Permit No. VA0003077, which was issued under the State Water Control Law and the Regulation to DTF on September 15, 2011 and expires on September 14, 2016.

14. "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.

15. "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.

16. "PRO" means the Piedmont Regional Office of DEQ, located in Glenn Allen, Virginia.

17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*

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

19. "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.

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

21. "VAC" means the Virginia Administrative Code.

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

23. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. DTF owns and operates two wastewater treatment plants at the Facility. One plant is a process wastewater treatment plant and the second plant is a sanitary wastewater treatment plant. The process wastewater plant discharges through internal Outfall 101 and the sanitary wastewater plant discharges through internal Outfall 102. Both Outfalls 101 and 102 ultimately discharge to the James River via Outfall 001. These plants operate under VPDES Permit No. VA0003077. The Permit allows DTF to discharge

treated sewage and other industrial wastes from the Facility, in strict compliance with the terms and conditions of the Permit.

2. The James River is the receiving body (James River Basin (Lower James River Subbasin)). During the 2010 305(b)/303(d) Water Quality Assessment, the James River was considered a Category 5A water ("A Water Quality Standard is not attained. The water is impaired or threatened for one or more designated uses by a pollutant(s) and requires a TMDL (303d list).") The Aquatic Life Use is impaired due to inadequate submerged aquatic vegetation (SAV), low dissolved oxygen, and high chlorophyll a. The Recreation Use is impaired due to E. coli. The Fish Consumption Use is impaired due to a VDH advisory for PCBs. The Fish Consumption Use also has several non-impairing observed effects - arsenic and mercury due to fish tissue screening value exceedances and kepone due to a VDH advisory. The Public Water Supply and Wildlife Uses are fully supporting. The James River is considered a Tier 1 water and is not proposed for Tier 3 designation.

3. DTF was included in the Chesapeake Bay TMDL, which was approved by the EPA on 12/29/2010. The Facility is included in the aggregated wasteload allocations for total nitrogen, total phosphorus, and total suspended solids for non-significant wastewater dischargers in the upper tidal freshwater James River estuary (JMSTF2). In addition, the Facility was addressed in the James River and Tributaries – City of Richmond Bacterial TMDL, which was approved by the EPA on 11/4/2010. The Facility was assigned an E. coli wasteload allocation of 1.74E+12 cfu/year.

4. In submitting its DMRs, as required by the Permit, DTF indicated that it exceeded discharge limitations contained in Part I.A of the Permit, for BOD_5, during the month of November, 2011. DTF indicated that it believed the exceedances from the process wastewater treatment plant were due to the fact that some of the process lines were down, and not as much methanol was available for the bacteria, resulting in a die-off. Subsequently, a still bottom truck was cleaned and the resulting ethylene glycol entered the system. The loss of a significant portion of the biomass resulted in less bacteria to process the ethylene glycol resulting in the exceedance.

5. On December 16, 2011, DTF's consent order, containing interim BOD_5 limits, became effective. DTF requested the December 16, 2011, consent order, as DTF is converting the Facility to only utilize its terephthalic acid manufacturing process, and needed less stringent BOD_5 limits than DTF's permit limits until the installation of upgrade or replacement for the terephthalic acid process is complete.

6. In submitting its DMRs, as required by the Permit, DTF indicated that it exceeded discharge limitations contained in the December 16, 2011 order, for BOD_5, during the month of December, 2011. DTF indicated that it believed the exceedance from the process wastewater treatment plant was due to the events in November, 2011, and that the system had not fully recovered.

7. In submitting its DMRs, as required by the Permit, DTF indicated that it exceeded discharge limitations contained in Part I.A of the Permit, for TSS, during the month of December, 2011. DTF indicated that it believed the exceedances from the process wastewater treatment plant were due to poor settling in the clarifier along with issues with the sand filters which were taken down for repairs. A portable filter was used when the sand filters were taken off-line, however the initial portable filter was not large enough to handle the load.

8. On February 2, 2012, PRO issued NOV No. W2012-02-P-0001 to DTF for the November and December 2011 exceedences.

9. DTF's operating logs indicate that it discharged treated wastewater from the Facility every day from November 1, 2011 to December 31, 2011.

10. 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."

11. The Regulation, at 9 VAC 25-31-50, also states that "[e]xcept in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances . . .."

12. Va. Code § 62.1-44.31 states that "[i]t shall be unlawful for any owner to fail to comply with any special order adopted by the Board, which has become final under the provisions of this chapter. . .."

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

14. The Department has issued no permits or certificates to DTF other than VPDES Permit No. VA0003077

15. The James River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

16. Based on the documentation submitted by DTF the Board concludes that DTF has violated the Permit, the Consent Order effective December 16, 2011, Va. Code § 62.1-44.5, Va. Code § 62.1-44.31 and 9 VAC 25-31-50 by discharging treated effluent from the Facility while concurrently failing to comply with the conditions of the Permit and the Consent Order, as described in the paragraphs above.

17. DTF has addressed all the reported exceedances described in the paragraphs above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, and upon consideration of Va. Code § 10.1-1186.2, the Board orders DTF and DTF agrees to:

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

2. Pay a civil charge of $10,080.00 in settlement of the violations cited in this Order, to be paid as follows:

   a. DTF shall pay $2,520.00 within 30 days of the effective date of the Order. 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

      DTF 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).

   b. DTF shall satisfy $7,560.00 of the civil charge by satisfactorily completeing the Supplemental Environmental Project ("SEP") described in Appendix A of this Order.

   c. The net project costs of the SEP to DTF shall not be less than the amount set forth in Paragraph D.2.b. If it is, DTF shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

   d. By signing this Order DTF certifies that it has not commenced performance of the SEP.

   e. DTF acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by DTF to a third party, shall not relieve DTF of its responsibility to complete the SEP as described in this Order.

f. In the event it publicizes the SEP or the SEP results, DTF shall state in a prominent manner that the project is part of a settlement of an enforcement action.

g. The Department has the sole discretion to:

i. Authorize any alternate, equivalent SEP proposed by the Facility; and

ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

h. Should the Department determine that DTF has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify DTF in writing. Within 30 days of being notified, DTF shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of DTF for good cause shown by DTF, 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, DTF 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. DTF 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. DTF 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 DTF 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. DTF 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. DTF shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. DTF 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 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 and any 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 DTF. Nevertheless, DTF 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 DTF has completed all of the requirements of the Order;

b. DTF 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 DTF.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve DTF 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 DTF 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. The undersigned representative of DTF certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind DTF to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of DTF.

14. 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.

15. By its signature below, DTF voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2012.

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

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DuPont Teijin Films U.S. Limited Partnership voluntarily agrees to the issuance of this Order.

Date: 9/7/2012 By: Joseph S. Bourne for Teijin-DuPont Films, Inc.,
(Person)

General Partner for DuPont Teijin Films U.S. Limited Partnership

Commonwealth of Virginia
~~City~~/County of Chesterfield

The foregoing document was signed and acknowledged before me this 7th day of September, 2012, by Joseph S. Bourne, for Teijin-DuPont Films, Inc., General Partner, on behalf of DuPont Teijin Films U.S. Limited Partnership, a limited partnership.

Midori Ousey Stone
Notary Public

7503039
Registration No.

My commission expires: My Commission Expires June 30, 2015

Notary seal:

MIDORI OUSEY STONE NOTARY PUBLIC MY COMMISSION NUMBER 7503039 COMMONWEALTH OF VIRGINIA

APPENDIX A
DUPONT TEIJIN FILMS U.S. LIMITED PARTNERSHIP
SUPPLEMENTAL ENVIRONMENTAL PROJECT

In accordance with Va. Code § 10.1-1186.2, DTF shall perform the Supplemental Environmental Project ("SEP") identified below in the manner specified in this Appendix. As used in this Order and Appendix, SEP means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1. The SEP to be performed by DTF is to assist the non-profit organization, Friends of the Lower Appomattox River ("FOLAR") reduce erosion and stabilize the riparian zone at the Hopewell City Park, which has resulted in suspended solids discharged to the Appomattox River.

   FOLAR has developed a plan in conjunction with the U.S. Department of Agriculture Natural Resources Conservation Service ("NRCS") to stabilize the storm water discharge area that is being damaged by the flow of surface water from several areas leading to the outfall. NRCS's proposed solution is to control and consolidate the drainage at the site, using geo-textile membrane, a riprap armored channel and additional piping and forming a protected central collector leading into the river. The City of Hopewell will be responsible for obtaining any required permits for the project.

   The project will reduce erosion and resultant sediment that currently flows into the Appomattox River during storm events. The project will serve to stabilize trees in the area that are at risk of uprooting due to the erosion. Stabilizing the area and improving the riparian buffer will retain the soil and reduce erosion, improving both water quality as well as the park's appearance.

   DTF will obtain rain water samples before work begins on the project and again after the project is completed in an attempt to quantify the reduction in sediment going to the river. DTF will pay the lab costs associated with obtaining Total Suspended Solids ("TSS") levels on both the before and after samples.

   The project will improve sediment control which will ultimately improve water quality in both the Appomattox and James Rivers. By reducing sediment discharge to the river, a better habitat for native flora and fauna will result as well as improved water recreation activities.

2. The SEP shall be completed by April 13, 2013.

3. DTF shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a responsible corporate officer or owner. The final report shall contain the lab

results for TSS. DTF shall submit the final report and certification to the Department within 30 days of the completion of the SEP.

4. If the SEP has not or cannot be completed as described in the Order, DTF shall notify the DEQ Piedmont Regional Director in writing within three business days of determining that the SEP has not or cannot be completed as required. Such notification shall include:
    a. an alternate SEP proposal, or
    b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.

5. DTF hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.

6. DTF shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 15 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from DTF's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

7. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Gina Pisoni
Enforcement Specialist, Sr.
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5156
804-527-5106 (fax)
Gina.Pisoni@deq.virginia.gov