



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Blue Ridge Regional Office

www.deq.virginia.gov

David K. Paylor
Director

Robert J. Weld
Regional Director

Molly Joseph Ward
Secretary of Natural Resources

Lynchburg Office
7705 Timberlake Road
Lynchburg, Virginia 24502
(434) 582-5120
Fax (434) 582-5125

Roanoke Office
3019 Peters Creek Road
Roanoke, Virginia 24019
(540) 562-6700
Fax (540) 562-6725

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO GREIF PACKAGING LLC VPDES Permit No. VA0006408

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 Greif Packaging LLC, regarding the a wastewater treatment plant owned and operated by Greif Packaging LLC, for the purpose of resolving certain alleged 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. "BRRO-L" means the Blue Ridge Regional Office of DEQ, located in Lynchburg, Virginia.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
7. "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.
8. "DMR" means Discharge Monitoring Report.
9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Facility" or "Plant" means the wastewater treatment plant located at 861 Fibre Plant Road, Riverville, Virginia (Amherst County), which treats and discharges treated industrial wastewater for the Greif Packaging LLC manufacturing plant under VPDES Permit No. VA0006408.
11. "Greif" means Greif Packaging LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Greif is a "person" within the meaning of Va. Code § 62.1-44.3.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "O&M" means operations and maintenance.
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 Permit No. VA0006408, which was issued under the State Water Control Law and the Regulation to Greif Packaging LLC on June 28, 2012 and which expires on June 27, 2017.

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. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "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.
21. "TMDL" means Total Maximum Daily Load, which is the sum of the individual wasteload allocation for point sources, load allocation for nonpoint sources, natural background loading and usually a safety factor. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VPDES" means Virginia Pollutant Discharge Elimination System.
25. "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. Greif owns and operates the Plant. The Permit allows Greif to discharge treated industrial wastewater from the Plant through Outfall 001 to the James River in compliance with the terms and conditions of the Permit.
2. The stream segment of the James River at the Outfall is listed as Category 5A on the current approved 303(d) list for non-attainment for fish consumption use because of the presence of polychlorinated biphenyls in the water column. A TMDL has not been prepared or approved for this stream segment.
3. Greif's operating logs indicate that it discharged treated wastewater from the Plant on a regular basis from December 1, 2014 through July 31, 2015.
4. In submitting its DMRs, as required by the Permit, Greif has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit for Outfall 001, for BOD₅ average and maximum loading for the months of February and March 2015 and BOD₅ average loading for April 2015. Greif indicated that as of May 2015 it was complying with all parameters.
5. In letters to DEQ dated December 8, 2014, February 2, 2015, April 1, 2015, July 13, 2015, and July 20, 2015, Greif reported unpermitted discharges of industrial process wastewater. These discharges occurred when overflows of process wastewater reached a ditch that led to a stormwater outfall. The causes of each of these discharges have been corrected.
6. A Second Annual Groundwater Monitoring Report was due under the Schedule of Compliance specified in the Permit by January 10, 2015. Due to third-party consultant unintentional delay in submittal, DEQ received that report on February 27, 2015.
7. BRRO-L issued Notice of Violation No. W2015-05-L-0001 on May 8, 2015 for the alleged violations pertaining to discharges in March 2015 as noted in Paragraph C(4) above.
8. Since the initial event in February 2015, Greif communicated regularly with DEQ regarding the events described in paragraph C.3 and the on-going investigation of cause. On June 1, 2015, in an email to the Department sent in response to the May NOV, Greif explained that filamentous bacteria, low nutrients, difficulty in obtaining a steady supply of settling polymer, and treatment difficulties resulting from aerator outages caused by a major upgrade of the Plant were all factors that potentially contributed to the alleged violations. That email also outlined seven actions Greif has taken to improve results including obtaining expert sludge analyses and use of filamentous bacteria controls, as well as on-going work on an approximately \$1.7 million Facility upgrade. By email of June 16, 2015, Greif notified DEQ that, with further analysis, the excessive presence of

an unusual filamentous bacteria in the wastewater treatment system was identified as the most significant cause of the conditions.

9. BRRO-L issued Notice of Violation No. W2015-06-L-0001 on June 10, 2015 for the alleged violations pertaining to discharges in April 2015 as noted in Paragraphs C(4) above.
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 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.
12. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
13. The Department has issued no permits or certificates pertaining to wastewater discharges to Greif other than VPDES Permit No. VA 0006408.
14. The James River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
15. On October 6 and 20, 2015, Department staff and representatives of Greif discussed both the alleged violations and Greif’s written response to the NOV.
16. Based on the results of those discussions and the documentation submitted by Greif, the Board concludes that Greif has violated the Permit and Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging treated industrial wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(4) through C(6), above.
17. As of May 2015, Greif has been in compliance with all effluent limits.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Greif, and Greif agrees to pay a civil charge of \$8,820.00 within 30 days of the effective date of the Order in settlement of the alleged violations cited in this 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

Greif shall include its Federal Employer Identification Number (FEIN) (363268123) 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, Greif 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 Greif for good cause shown by Greif, 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 and in Notice of Violation No. W2015-05-L-0001 dated May 8, 2015 and NOV No. W2015-06-L-0001 dated June 10, 2015. 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, Greif admits the jurisdictional allegations but neither admits nor denies the findings of fact and conclusions of law contained herein.
4. Greif 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. Greif 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 Greif 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. Greif 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. Greif shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Greif 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 Greif. Nevertheless, Greif 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 Greif has completed all of the requirements of the Order;
 - b. Greif 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 Greif.

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

And it is so ORDERED this _____ day of _____.

Robert Weld, Regional Director
Department of Environmental Quality

------(Remainder of Page Intentionally Blank)-----

Greif Packaging LLC voluntarily agrees to the issuance of this Order.

Date: October 28, 2015 By: DT Scott, V.P. Mill Operations
(Person) (Title)
Greif Packaging LLC

State/Commonwealth of Virginia
City/County of Amherst

The foregoing document was signed and acknowledged before me this 28th day of October 2015, by David T Scott who is VP Mill Operations of Greif Packaging LLC, on behalf of the company.

Jammy Jamerson
Notary Public
204726
Registration No.

My commission expires: 9-30-17

Notary seal: