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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Molly Joseph Ward
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Director

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
HILEX POLY CO. LLC
VPDES Permit No. VAR05
FOR THE
HILEX POLY CO. LLC FACILITY
Storm Water Registration No. VAR051636**

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 Hilex Poly Co. LLC, regarding the facility, 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. "CSCE" means comprehensive site compliance evaluation.

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 "Site" means the Hilex Poly Co. LLC plastic bag manufacturing facility located at 2800 Sprouse Drive, Richmond, Virginia, from which discharges of storm water associated with industrial activity occur.
11. "Hilex Poly" means Hilex Poly Co. LLC, a limited liability company (LLC) authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Hilex Poly 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 General VPDES Permit No. VAR05 which was issued under the State Water Control Law and Regulation on July 1, 2014 and which expires on June 30, 2019. Hilex Poly applied for the coverage under the Permit and was issued Registration No. VAR051636.
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. "Registration statement" means a registration statement for coverage under the general permit.
20. "Regulation" means the General VPDES Permit for Discharges of Storm Water Associated with Industrial Activity Regulation, 9 VAC 25-151-10 *et seq.*
21. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
22. "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.
23. "SWPPP" means Storm water Pollution Prevention Plan.
24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.
26. "VPDES" means Virginia Pollutant Discharge Elimination System.
27. "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. Hilex Poly owns and operates the Facility which manufactures plastic retail bags. The Facility is a plastic retail bag recycling center where used plastic retail bags are processed into resin pellets which are then used to produce new retail bags. The Facility discharges storm water associated with industrial activity.
2. The Permit allows Hilex Poly to discharge storm water to an unnamed tributary (UT) of Cornelius Creek, in compliance with the terms and conditions of the Permit.
3. The UT of Cornelius Creek is located in the James River, Lower James River Basin. During the 2012 305(b)/303(d) Integrated Water Quality Assessment, Cornelius Creek was impaired of the Recreation Use due to E. coli exceedances. The Fish Consumption Use was fully supporting with observed effects due to a VDH advisory for kepone. The Aquatic Life Use was considered fully supporting and there was insufficient information to assess the Wildlife Use. Cornelius Creek would be considered a Tier 2 water.
4. On September 15, 2014, a compliance inspection was performed by DEQ staff with respect to the SWPPP requirements of the Permit at the Facility. DEQ staff observed the following compliance deficiencies:
 - a) Failure to document a quarterly visual examination of storm water discharges associate with industrial activity from each outfall.
 - b) Failure to perform the testing and provide the total daily maximum load (TMDL) DMRs for outfalls 001 and 002 from the July 1, 2014 through December 31, 2014 monitoring period.
 - c) Failure to provide the SWPPP.
 - d) Failure to keep the area around a trash compactor free from ink stains.
 - e) Failure to provide documentation of SWPPP employee training sessions.
 - f) Failure to perform and provide documentation of routine inspections of storm water discharges associated with industrial activity from each outfall.
 - g) Failure to provide certification of non-storm water discharges.
 - h) Failure to provide documentation of storm water annual comprehensive site compliance evaluations.
5. Part I.A.1.a.1 of the Permit states that the permittee shall perform and document quarterly visual examinations of storm water discharges associated with industrial activity from each outfall, unless exempt per the Permit.
6. Part I.A.2 of the Permit states that the permittee shall submit the results of the monitoring required by the Permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in the Permit; monitoring results shall be submitted to the Department's regional office; and monitoring results shall be reported on a DMR or on forms provided, approved, or specified by the Department.

7. Part III.F.2 of the Permit states that a SWPPP shall be developed and implemented for the Facility covered by the Permit. The SWPPP is intended to document the selection, design, and installation of control measures, including BMPs, to eliminate or reduce the pollutants in all storm water discharges from the Facility, and to meet applicable effluent limitations and water quality standards.
8. Part III.B.4.b.1 of the Permit states that the permittee shall keep clean all exposed areas of the Facility that are potential sources of pollutants to storm water discharges. Typical problem areas include areas around trash containers, storage areas, loading docks, and vehicle fueling and maintenance areas. The plan shall include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks and containers.
9. Part III.B.4.b.6 of the Permit states that the permittee shall implement a storm water employee training program for the Facility. The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training. Training shall be provided for all employees who work in areas where industrial materials or activities are exposed to storm water, and for employees who are responsible for implementing activities identified in the SWPPP. The training shall cover the components and goals of the SWPPP, and include such topics as spill response, good housekeeping, material management practices, control measure operation and maintenance, etc. The SWPPP shall include a summary of any training performed.
10. Part III.B.5 of the Permit states that qualified personnel shall regularly inspect all areas of the Facility where industrial materials or activities are exposed to storm water. The inspection frequency shall be specified in the SWPPP based upon a consideration of the level of industrial activity at the Facility, but shall be at a minimum quarterly unless more frequent intervals are specified elsewhere in the Permit or written approval is received from the Department for less frequent intervals. Inspections shall be performed during periods when the Facility is in operation. At least once each calendar year, the routine Facility inspection shall be conducted during a period when a storm water discharge is occurring.
11. Part III.D.2.a of the Permit states that the SWPPP shall include documentation that all storm water outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges (i.e. discharges other than storm water ; authorized non-storm water discharges described in Part I.B special condition 1; or discharges covered under a separate VPDES permit.) Part III.E.3 of the Permit states that when a report does not identify any incidents of noncompliance, the report shall contain a certification that the Facility is in compliance with the SWPPP and the Permit. The report shall be signed in accordance with Part II.K of the Permit and maintained with the SWPPP.

12. On April 28, 2015, PRO issued NOV No. W2015-04-P-0001 for the compliance deficiencies observed during the inspection on September 15, 2014. The NOV cited the above described violations.
13. On May 12, 2015, in response to the NOV, representatives of Hilex Poly conference called with DEQ staff to discuss the violations and resolution of the violations.
14. On May 15, 2015, the company provided a written corrective action response to the NOV addressing the eight storm water related observations cited in the NOV. The company stated that the SWPPP was in place and available during the 2014 inspection; the compactor area had been thoroughly cleaned and provided photo documentation; the 2014 annual inspection, weekly routine inspections and quarterly inspections had not been performed but employees had been trained and training rosters were attached to the letter; certification of non-storm water discharges was located with the SWPPP and available during the 2014 inspection; and training for the SWPPP team members was performed on May 12, 2015 and a training roster was provided.
15. 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 water sewage, industrial wastes, other wastes, or any noxious or deleterious substances.
16. The Regulation, at 9 VAC 25-151-50, 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.
17. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
18. The unnamed tributary of Cornelius Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
19. Based on the results of September 15, 2014 inspection, and the May 12, 2015 conference call meeting, the Board concludes that Hilex Poly has violated the Permit and Va. Code 62.1-44.5 and 9 VAC 25-151-50 at the Facility by discharging storm water associated with industrial activity from the Facility while concurrently failing to comply with the conditions of the Permit, as described in Section C above.
20. Hilex Poly has submitted documentation that verifies that the violations as described in paragraph C (4) above, have been corrected.
21. Hilex Poly failed to submit the two TMDL DMRs for the monitoring periods of January 1, 2015 through June 30, 2015, due July 10, 2015; and July 1, 2015 through December 31, 2015, due January 10, 2016. The company reported personnel changes may have been the cause of the oversight.

SECTION D: Agreement and Order

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

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$9,707 within 30 days of the effective date of this Order in settlement of the 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

Hilex Poly 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, Hilex Poly 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 Hilex Poly for good cause shown by Hilex Poly, 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 NOV No. W2015-04-P-0001 and 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, Hilex Poly admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Hilex Poly 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. Hilex Poly 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 Hilex Poly 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. Hilex Poly 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. Hilex Poly shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hilex Poly 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 Hilex Poly. Nevertheless, Hilex Poly 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 Hilex Poly has completed all of the requirements of the Order;
 - b. Hilex Poly 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 Hilex Poly.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hilex Poly 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 Hilex Poly 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 Hilex Poly 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 Hilex Poly to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Hilex Poly.
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, Hilex Poly voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2016.

Michael P. Murphy, Regional Director
Department of Environmental Quality

Hilex Poly Co. LLC, voluntarily agrees to the issuance of this Order.

Date: 06/03/2016 By: Richard Starling, Director Environmental
(Person) (Title)
Hilex Poly Co. LLC

Commonwealth of Virginia
City/County of Richmond

The foregoing document was signed and acknowledged before me this 3 day of
June, 2016, by Richard Starling who is

Director of Environmental of Hilex Poly Co. LLC, on behalf of the company.

Kacie G. Whiten
Notary Public
W-00283632
Registration No.

My commission expires: 5-15-20

Notary seal:



APPENDIX A

In order to comply with the TMDL testing Permit requirements, Hilex Poly shall complete the following:

1. Monitoring

Collect and analyze TSS, Total Nitrogen and Total Phosphorus from Outfalls 001 and 002 for the monitoring periods of:

- January 1, 2016 through June 30, 2016
- July 1, 2016 through December 31, 2016
- January 1, 2017 through June 30, 2017
- July 1, 2017 through December 31, 2017

2. Reports

Submit to DEQ results of the TMDL monitoring described in item 1 above, by no later than the 10th day of the month after each monitoring event takes place.

3. Contact

Unless otherwise specified in this Order, Hilex Poly shall **submit all requirements** of Appendix A of this Order to:

Cynthia Akers
Enforcement Specialist
VA DEQ-PRO
4949-A Cox Road
Glen Allen, VA 23060
Cynthia.Akers@deq.virginia.gov