COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
INTERNATIONAL PAPER COMPANY
FOR
INTERNATIONAL PAPER FRANKLIN MILL

Virginia Pollutant Discharge Elimination System Permit No. VA0004162

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 the International Paper Company, regarding the International Paper Company Franklin Mill, for the purpose of resolving certain violations of the State Water Control Law and the applicable Permit and the VPDES 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. "Company" means International Paper Company, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. The Company is a "person" within the meaning of Va. Code § 62.1-44.3.

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. "Facility" means the International Paper Company Franklin Mill located at 34040 Union Camp Drive, Franklin, Virginia, a fluff paper manufacturing plant.

9. "Landfill" means the International Paper Company Franklin Mill solid waste landfill, Virginia Permit number SWP 504, located at SR 616, Isle of Wight County, Virginia.

10. "Leachate" means a liquid that moves through or drains from a landfill.

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

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. VA0004162 which was issued under the State Water Control Law and Regulations to the Company on November 16, 2010, modified on April 10, 2012 and August 8, 2012, and expires on November 15, 2015.

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

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

18. "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.

19. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

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

21. "VAC" means Virginia Administrative Code.

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

SECTION C: Findings of Fact and Conclusions of Law

1. The Company owns and operates the Facility. The Permit allows the Company to discharge process wastewater, including treated landfill leachate, through outfall 001, to the Blackwater River within limits as listed in the Permit.

2. The Blackwater River joins the Nottoway River to form the Chowan River, which empties into the Albemarle Sound (North Carolina). This segment of the Blackwater River is listed in DEQ's 305(b) report as impaired for aquatic life dissolved oxygen (natural conditions), Escherichia coli (E. Coli), and Mercury in fish tissue, sources unknown. Washole Creek, a tributary to the Blackwater River, is listed in DEQ's 305(b) report as impaired for aquatic life dissolved oxygen (natural conditions).

3. On February 19, 2014, the Company reported a release of an unknown quantity of leachate from the Landfill. According to the report, the leachate force main pipe from the Landfill to the wastewater treatment plant was damaged during an excavation on February 8, 2014 by a land lessee digging, without permission, a drainage ditch for a farm field. According to an initial report, only a small amount of liquid flowed from the damaged pipe. Upon learning of the event, International Paper immediately shut off pumps sending leachate flow to the leachate force main pipe. On February 19, 2014

upon a subsequent visit to the damaged pipe, surface water and ground water flow, with a small amount of black residual, was observed.

4. According to the Company, permanent repairs to the pipe were made on February 20, 2014. Cleanup of residual material in the ditch began on February 21 and completed on February 22, 2014; the top 4 inches of the ditch bottom was excavated with the excavated material disposed of in the Landfill.

5. By letter dated February 24, 2014, the Company estimated that approximately 136,800 gallons of leachate had entered an unnamed swamp that drains into Washole Creek and then the Blackwater River. In the letter, the Company reported that no impacts were observed to state waters.

6. According to the Company, the leachate force main pipe is marked with signs along its entire length yet at the location where the pipe was damaged, leading to the discharge of the leachate, the signs had been removed. The Company reported that the signs have been replaced, and all land leases in the Company area are in the process of being reviewed to verify that all lessees are aware of any underground utilities on those properties and establish an additional notification process the lessees must follow in order to inform Company personnel prior to performing any work to modify the Company property.

7. On March 10, 2014, TRO issued Notice of Violation No. W2014-03-T-001 to the Company for the unauthorized discharge to State waters.

8. On March 18, 2014, DEQ staff met with Company personnel to discuss the unauthorized discharge and the NOV. The Company representatives described the actions that led to the unauthorized discharge, the repairs, cleanup, and plans to prevent re-occurrence as described in C.6 above.

9. Va. Code § 62.1-44.5(A) 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."

10. The Permit at Part II.F. prohibits unpermitted discharges of pollutants into state waters.

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 to the Company other than VPDES Permit No. VA0004162.

14. Based on the reports from the Company on February 19, 2014 and February 24, 2014, and meeting with Company representatives on March 18, 2014, the Board concludes

that an unauthorized discharge from the Facility reached State waters, and that the Company has violated the Va. Code, the VPDES Regulation and the Permit as noted above.

15. The Company has submitted documentation that verifies that the violation as described in Section C, above, has been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Company, and the Company agrees to pay a civil charge of $10,725 within 30 days of the effective date of the 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 shall be delivered to:

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

The Company 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, the Company shall be liable for attorney's fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Company, for good cause shown by the Company, 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 the purposes of this Order and subsequent actions with respect to this Order only, the Company admits the jurisdictional allegations, the findings of fact, and conclusions of law contained herein.

4. The Company 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. The Company 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 the Company 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. The Company 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. The Company shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Company 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 Company 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 the Company. Nevertheless, the Company 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 the Company has completed all of the requirements of the Order;

    b. The Company 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 the Company.

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

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, the Company voluntarily agrees to the issuance of this Order.

And it is so ORDERED this_____ day of _____, 2014.

_____
Regional Director
Department of Environmental Quality

The International Paper Company voluntarily agrees to the issuance of this Order.

Date: 8/4/2014 By: [signature], Mill Manager
(Person) (Title)
International Paper Company

Commonwealth of Virginia

City/County of Southampton

The foregoing document was signed and acknowledged before me this 4th day of August, 2014, by Jeff Stevens who is Mill Manager of the International Paper Company, on behalf of the International Paper Company.

Deborah B. Bradshaw
Notary Public

351745
Registration No.

My commission expires: April 30, 2016

Notary seal:

DEBORAH B. BRADSHAW
COMMONWEALTH OF VIRGINIA
NOTARY PUBLIC