COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE

L. Preston Bryant, Jr.
Secretary of Natural Resources

Mailing Address: P.O. Box 1688, Abingdon, Virginia 24212-1688
Street Address: 355 Deadmore Street, Abingdon, Virginia 24210
(276) 676-4800 Fax (276) 676-4899
www.deq.virginia.gov

David K. Paylor
Director

Michael D. Overstreet
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
TURMAN SAWMILL, INC.
VPDES GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY, REGISTRATION STATEMENT NO. VAR050098

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d) and § 62.1-44.34:20, between the State Water Control Board and Turman Sawmill, Inc., for the purpose of resolving certain violations of the State Water Control Law and regulations.

SECTION B: Definitions

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

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

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.

5. "Order" means this document, also known as a Consent Special Order.

6. "Company" means Turman Sawmill, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries and parents.

7. "Facility" means the Turman Sawmill, Inc.'s commercial sawmill operation located at 555 Expansion Drive, Hillsville, Virginia.

8. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.

9. "Permit" means the VPDES General Permit for Stormwater Discharges Associated with Industrial Activity. Coverage for this Facility is under VPDES General Permit Registration Statement No. VAR050098.

10. "SWPPP" means stormwater pollution prevention plan.

11. "ODCP" means oil discharge contingency plan.

SECTION C: Findings of Facts and Conclusions of Law

1. Turman Sawmill, Inc. owns and operates a commercial sawmill operation in the Carroll County Industrial Park in Carroll County. The Company is subject to the VPDES General Permit for Stormwater Discharges Associated with Industrial Activity. Coverage for this Facility is under VPDES General Permit Registration Statement No. VAR050098. The permit was reissued on July 1, 2004, and will expire on June 30, 2009. The Registration Statement was received by DEQ on May 28, 2004.

2. In response to complaints received by DEQ from Town of Hillsville Water Treatment Plant personnel, on November 6, 2006 DEQ staff investigated the discharge of turbid water from a small branch that flows down a hollow and confluences with Little Reed Island Creek upstream from the water treatment plant intake. Following the small branch back upstream from the confluence onto Company property, it appeared that the turbidity was originating at the Facility's stormwater retention pond. The pond discharge was very turbid. It appeared that erosion from soil and rock recently placed upgradient from the pond had washed into and filled the pond during heavy rainfall. The actual level of sediment in the pond was not visible due to the turbidity. This "unusual or extraordinary discharge" was not reported to DEQ by Company personnel as required by the Permit. Although the Facility had a stormwater pollution prevention plan, and has since updated the plan and instituted documentation of inspections, there was no documentation that the Facility had been conducting regular stormwater inspections at the time of the incident.

3. In response to additional complaints from Town of Hillsville officials, concerning not only turbidity but also odors of diesel fuel, DEQ staff again visited the Facility the following day, November 7, 2006. DEQ staff met again with Company personnel and discussed the ongoing complaints, including the odors of diesel fuel. Company personnel stated that the fueling area sump was being cleaned and that fuel accidentally spilled

during equipment fueling may have accumulated in the sump and been discharged during heavy rainfall. Investigation of the sump showed a pipe exiting the sump, which Company personnel stated discharged onto the ground. It is believed that the pipe may have actually discharged to a storm water catch basin outside the fueling area that discharges to the storm water retention pond. The fueling area contained two off-road diesel tanks, located within a concrete walled containment area. No discharge pipes were noted in the containment structure, and no leaks or problems were noted with these tanks. The storm water retention pond appeared much as it had the previous day, except for the presence of a heavy oil sheen covering the surface and a strong diesel fuel odor. The discharge from the storm water retention pond was very turbid and contained both an oil sheen and an odor of diesel fuel. Analysis of water samples taken of the storm water retention pond discharge on November 7, 2006, resulted in a Total Suspended Solids ("TSS") value of 1372 mg/l, and a Total Petroleum Hydrocarbon ("TPH") value of 182 mg/l for diesel fuel. It appeared likely, due to the amount of product present, that a significant diesel fuel spill occurred between the two inspections, rather than any disturbance and release of product due to cleaning of the fuel area sump. The "unusual or extraordinary discharge" of TSS was not reported to DEQ by Company personnel as required by the Permit. The "unauthorized discharge" of diesel fuel was not reported to DEQ by Company personnel as required by the Permit and by statute. There was no documentation that the Facility had been conducting regular stormwater inspections at the time of these incidents.

4. DEQ staff conducted a stormwater general permit technical inspection at the Facility on January 25, 2007. During the inspection, a discharge of industrial process water (condensate from a steamer used to darken walnut lumber), was identified as the source of the stormwater sedimentation pond's dark brown color. This same color was also noted in the discharge from the pond (permitted outfall 003). The "unauthorized discharge" of steamer condensate was not reported to DEQ by Company personnel as required by the Permit. The company had instituted documentation of stormwater inspections, but this discharge was not noted and reported as a result of those inspections.

5. The two off-road diesel tanks noted in Item 3 above were each larger than 660 gallons, thereby requiring registration. Neither tank was registered at the time of the November, 2006 investigations. A DEQ Registration Form 7540 has since been received by DEQ for registration of both aboveground storage tanks.

6. The DEQ Registration Form 7540 submitted in Item 5 above indicated that each of the two tanks has 16,000 gallons capacity. The total on-site aggregate capacity would therefore be 32,000 gallons, which requires that the facility have an approved ODCP. No ODCP was available at the time of the November, 2006 investigations or the January 25, 2007 technical inspection. One of the tanks has since been permanently closed, which removes the requirement that an ODCP be submitted and approved.

7. There was no documentation on site at the time of the technical inspection to show that an annual comprehensive site compliance evaluation had been conducted, that annual benchmark monitoring had been conducted or that employee training had been conducted. These items are required by the Permit.

8. On February 1, 2007, a Notice of Violation was issued to the Company for the alleged violations. DEQ and Company officials then met on February 16, 2007. DEQ staff and Company personnel met again, at the Company's request, on May 21, 2007, to discuss the draft consent order which had been sent to the Company. Cleanup has occurred such that DEQ has closed the incident investigation of the diesel fuel spill. The company has also torn out and reworked the equipment fueling pad, and has constructed a new, larger stormwater management pond equipped with a riser structure.

9. Virginia Code § 62.1-44.5.A.1. and Regulation 9 VAC 25-31-50.A state that except in compliance with a certificate or permit issued by the board, it shall be unlawful for any person to discharge into state waters sewage, industrial waste, other wastes, or any noxious or deleterious substances. The high solids and steamer condensate discharges violated these code and regulatory requirements.

10. Part II.F (Unauthorized discharges) of the Permit states that "Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to: 1) discharge into state waters sewage, industrial waste, other wastes, or any noxious or deleterious substances; or 2) Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses." Part II.G of the permit requires reporting of unauthorized discharges within 24 hours of discovery of the discharge. Part II.H of the Permit requires reporting of unusual or extraordinary discharges within 24 hours of discovery of the discharge. Part II.I of the permit requires reporting of any noncompliance which may adversely affect state waters or may endanger public health, again within 24 hours of discovery of the discharge. The high solids and steamer condensate discharges violated these regulatory requirements.

11. Virginia Code at § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands or storm drain systems within the Commonwealth of Virginia. The operator of a facility responsible for such discharge shall immediately implement any approved oil discharge contingency plan or take such other action as may be deemed necessary in the judgment of the Board to contain and clean up such discharge. Virginia Code at § 62.1-44.34:19 specifies reporting requirements.

12. Part I.B.2 of the Permit states in part: "This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill".

13. Part III.D.1.d of the Permit states in part, "Nonstorm water discharges to state waters that are not authorized by a VPDES permit are unlawful, and must be terminated".

14. Regulation 9 VAC 25-91-100.A requires "...an operator of an individual AST located within the Commonwealth with a storage capacity of more than 660 gallons of oil to register such facility or AST with the board ...".

15. Virginia Code at § 62.1-44.34:15 requires filing and Board approval of an oil discharge contingency plan for a facility at least 90 days prior to commencement of operations of that facility.

16. Regulation 9 VAC 25-91-20 B. 3 states that the provisions of Part IV (9 VAC 25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) of this chapter apply to: (ii) all facilities in the Commonwealth of Virginia with an aggregate aboveground storage capacity of 25,000 gallons or greater of oil, unless otherwise specified within this chapter.

17. Part III.E of the Permit states in part, "The permittee shall conduct facility inspections (site compliance evaluations) at least once a year". Part I.A and Part IV. Sector A, Item E of the Permit require annual benchmark monitoring. Part III.B of the Permit requires employee training in topics related to the stormwater pollution prevention plan.

SECTION D: Agreement and Order

Accordingly the Board, by virtue of the authority granted it pursuant to Va. Code § 62.1-44.15 (8a) and (8d) and § 62.1-44.34:20, orders the Company, and the Company agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders the Company, and the Company voluntarily agrees to pay a civil charge of **$19,621.00** 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 or money order payable to the "Treasurer of Virginia", and delivered to:

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

Either on a transmittal letter or as a notation on the check or money order, the Company shall indicate that this payment is submitted pursuant to this Order and shall include the Company's Federal Identification Number.

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 after notice and opportunity to be heard.

2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or 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 as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, the Company admits the jurisdictional allegations, factual findings, 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, Code § 2.2-4000 *et seq.*, 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 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 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 act of God, war, strike, or such other occurrence. The Company must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The Company shall notify the Director of the

SWRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

a. the reasons for the delay or noncompliance;
b. the projected duration of 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 notify by phone the Director of the SWRO within 24 hours of learning of any condition listed above, which the Company intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of 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. 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.

11. This Order shall become effective upon execution by both the Director or his designee and the Company. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date which precedes the effective date of this Order.

12. This Order shall continue in effect until 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.

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

And it is so ORDERED this _____ day of _____, 2007.

_____
Michael D. Overstreet, Regional Director
Department of Environmental Quality

Turman Sawmill, Inc. voluntarily agrees to the issuance of this Order.

Name: Joel Michael Turman Pres.

Title: _____

Date: 6/11/07

State of Virginia

City/County of Floyd

The foregoing instrument was acknowledged before me this 11th day of June, 2007,

by John Michael Turman, who is President of Turman Sawmill, Inc.
(name) (title)

on behalf of the corporation.

Freda G. Hamm
Notary Public

My commission expires: 7-31-2010

APPENDIX A

In order to comply with the provisions of the State Water Control Law and Regulations and the Permit, the Company agrees to implement the following actions by the dates noted below:

1. The Company shall report to the SWRO any unauthorized discharges, unusual or extraordinary discharges, or any noncompliance which may adversely affect state waters or may endanger public health immediately upon discovery (within 24 hours), as outlined in Parts III. G, H, and I of the Permit.

2. The Company shall maintain all stormwater control structures, shall clean out and maintain the stormwater control pond and shall seed the earthen slope upgradient from the stormwater control pond to establish and maintain permanent vegetative cover and notify DEQ of completion of the work **NO LATER THAN MAY 30, 2007**.

3. The Company has stopped the discharge of the condensate from the steamer used to darken walnut lumber. Ultimate disposition of the condensate process water will be by use of one of the following remedies:
   a) connection to public sewer when available;
   b) by pump and haul operation to discharge to public sewer; or
   c) by agreed upon capture and beneficial reuse of the process water.

   The Company shall notify DEQ of the volume and ultimate disposition of condensate produced from the above-mentioned process prior to resuming that operation.

4. Registration of the two ASTs has been accomplished. The requirement that an ODCP be submitted and approved will be removed by closure of one of the tanks. The Company shall submit all documentation required for closure, do all necessary work to close one tank and notify DEQ that work is complete and ready for a final closure inspection **NO LATER THAN APRIL 30, 2007**.

5. The Company shall conduct an annual comprehensive site compliance evaluation and submit documentation verifying the date and findings of the inspection **NO LATER THAN MAY 30, 2007.**

6. The Company shall conduct annual benchmark monitoring and submit analysis results **NO LATER THAN JUNE 30, 2007**.

7. The Company shall conduct employee training and submit rosters and copies of any written material used in the training **NO LATER THAN MAY 30, 2007**.

8. The Company shall submit quarterly reports for a period of one year, with reports being due **July 10, 2007, October 10, 2007, January 10, 2008 and April 10, 2008**. These reports shall provide updates on compliance with the requirements of this Appendix.

9. All reports to be submitted to the SWRO shall be mailed to the attention of Ruby Scott, Compliance Auditor, P. O. Box 1688, Abingdon, VA 24212.

10. None of the above items modify or change the Permit and all requirements of the Permit and Registration Statement No. VAR050098 shall remain in effect.