COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2009
www.deq.virginia.gov

L. Preston Bryant, Jr
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
VITEX PACKAGING, INC
Storm Water Registration No. VAR050764

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 Vitex Packaging, Inc., 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. "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.

2. "CSCE" means a comprehensive site compliance evaluation.

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. "Facility" means the printing plant located at 1137 Progress Road in Suffolk, Virginia, where Vitex produces a variety of commercial packaging components.

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

7. "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.

8. "Registration statement" means a registration statement for storm water discharges under 9 VAC 25-151-60.

9. "Regulation" means the VPDES General Permit for Storm Water Discharges Associated with Industrial Activity, 9 VAC 25-151-10 *et seq.*

10. "Sector X" means Industry Sector X defined by the Regulation as that sector of industry engaged, in part, in printing and publishing.

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

12. "SWP3" means a storm water pollution prevention plan.

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

14. "2004 Permit" means VPDES General Permit No. VAR05 for Storm Water Discharges Associated with Industrial Activity, which was effective July 1, 2004, and expired June 30, 2009.

15. "2009 Permit" means VPDES General Permit No. VAR05 for Storm Water Discharges Associated with Industrial Activity, which was effective July 1, 2009, and expires June 30, 2014.

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

17. "VAC" means the Virginia Administrative Code.

18. "Vitex" means Vitex Packaging, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Vitex is a "person" within the meaning of Va. Code § 62.1-44.3.

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

20. "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. Vitex owns and operates the Facility in Suffolk, Virginia. Storm water discharges from the Facility were subject to the 2004 Permit through Registration No. VAR050764.

Vitex submitted a timely registration statement for the 2009 Permit. Storm water from the Facility discharges to Cedar Lake Creek, a tributary to the Nansemond River.

2. The Nansemond River is located in the James River Basin and is listed in DEQ's 305(b) report as impaired for estuarine bioassessments, the source of which is contaminated sediments, and for the presence of fecal coliform, the source of which is unknown.

3. Vitex was required to develop and implement a Facility SWP3 according to requirements outlined in Part III and Part IV.B (for Sector X) of the 2004 Permit.

4. The registration statement for the 2004 Permit stated that there was one storm water outfall at the Facility. Part I.A.1.a of the 2004 Permit required Vitex to perform and document visual examinations of the quality of storm water discharges from that storm water outfall once each calendar quarter and to record the visual quality of the storm water discharge including observations of color, odor, clarity, floating solids, settled solids, foam, oil sheen, and other obvious indicators of storm water quality.

5. DEQ staff had conducted a routine compliance inspection on September 16, 2002, and noted deficiencies in Facility inspections, employee training, quarterly visual monitoring of storm water discharges, Facility housekeeping, and the failure to complete a non-storm water certification, among other things. These deficiencies were noted in a Warning Letter dated September 23, 2002. DEQ staff had conducted another routine compliance inspection on January 26, 2005, and noted similar compliance deficiencies in a Warning Letter dated March 2, 2005.

6. During a DEQ Facility inspection on April 29, 2009, DEQ staff documented the following compliance deficiencies with respect to the monitoring requirements of the 2004 Permit:

   a. The quarterly visual examinations of storm water quality required by Part I.A.1.a. of the 2004 Permit had not been performed since the first quarter of calendar year 2007.

   b. The quarterly visual examination of storm water quality that was performed during the first quarter of calendar year 2007 was not performed at a storm water outfall and did not record observations of the obvious indicators of storm water quality as required by Part I.A.1.a of the 2004 Permit.

7. Vitex violated condition Part I.A.1.a. of the 2004 Permit as noted in paragraph C.6 of this Order.

8. Part III.B.2.c(1), (4) and (7) and Part IV.B.1 (for Sector X) of the 2004 Permit required that the SWP3 include a site map that identifies the directions of storm water flow, locations of storm water outfalls, and the locations of all potential pollutant sources.

9. Part III.B.6.b of the 2004 Permit outlined those best management practices ("BMPs") that may be included in a SWP3 to control storm water at the Facility. Part III of the 2004

Permit provided that those BMPs that were included in the SWP3 were a condition of and enforceable under the 2004 Permit.

10. Part III.B.6.b(1)(a) and Part IV.B.2.a (for Sector X) of the 2004 Permit provided that a SWP3 may include good housekeeping practices so as to minimize the potential of contributing pollutants to storm water discharges. Part 6 of the Facility SWP3 detailed the good housekeeping practices to be followed at the Facility.

11. Part III.B.6.b(1)(e) of the 2004 Permit provided that a SWP3 may include a schedule (at least quarterly) for conducting routine Facility inspections. Part 8 of the Facility SWP3 required monthly inspections of the Facility.

12. Part III.B.6.b(1)(f) and Part IV.B.2.b (for Sector X) of the 2004 Permit provided that a SWP3 may include a storm water employee training program and, if so, identify periodic dates for such training. Part 9 of the SWP3 required that Facility employees be trained annually in storm water management.

13. Part III.D.1 of the 2004 Permit required that the SWP3 include a signed certification that all discharges from the Facility had been tested or evaluated for non-storm water.

14. Part III.E of the 2004 Permit required that a CSCE be conducted at least annually; and that the report of the CSCE include an evaluation summary, either identify incidents of noncompliance or contain a certification that Vitex is in compliance with the 2004 Permit and the Facility SWP3, and be signed and certified.

15. During the DEQ Facility inspection on April 29, 2009, DEQ staff reviewed the Facility SWP3 and documented compliance deficiencies with respect to the SWP3 requirements of the 2004 Permit, including the following:

    a. While the registration statement for the 2004 Permit referenced in paragraph C.4 of this Order stated that there was one storm water outfall at the Facility, the SWP3 and associated site map did not identify the location of this storm water outfall, the direction of storm water flow, or the locations of all potential pollutant sources as required by Part III.B.2.c(1), (4) and (7) and Part IV.B.1 (for Sector X) of the 2004 Permit.

    b. The Facility was not being maintained in such a manner as to minimize the potential of contributing pollutants to storm water discharges as required by Part III, Part III.B.6.b(1)(a) and Part IV.B.2.a (for Sector X) of the 2004 Permit and Part 6 of the Facility SWP3. Specifically, there were large quantities of finely shredded paper debris throughout the outside of the Facility.

    c. The monthly Facility inspections required by Part III and Part III.B.6.b(1)(e) of the 2004 Permit and Part 8 of the Facility SWP3 had not been conducted since February 2007.

d. The annual training in storm water management required by Part III, Part III.B.6.b(1)(f) and Part IV.B.2.b (for Sector X) of the 2004 Permit and Part 9 of the Facility SWP3 had not been conducted in 2008.

e. The non-storm water certification maintained with the Facility SWP3 was not signed as required by Part III.D.1 of the 2004 Permit.

f. An annual CSCE had not been performed in 2008 as required by Part III.E of the 2004 Permit.

g. The annual CSCE performed in 2007 was not signed; did not include an evaluation summary; and neither identified incidents of noncompliance nor contained a certification that the Facility was in compliance with the 2004 Permit and the Facility SWP3 as required by Part III.E of the 2004 Permit.

16. Based on the results of the April 29, 2009, inspection, the Board concludes that Vitex has violated conditions Part III, Part III.B.2.c(1), (4) and (7), Part III.B.6.b(1)(a), Part III.B.6.b(1)(e), Part III.B.6.b(1)(f), Part III.D.1, and Part III.E, and, for Sector X, Part IV.B.1, Part IV.B.2.a, and Part IV.B.2.b 0f the 2004 Permit, and conditions Parts 6, 8 and 9 of the Facility SWP3 as noted in paragraph C.15 of this Order.

17. On June 29, 2009, DEQ issued NOV W2009-06-T-0004 to Vitex. The NOV advised Vitex of the violations of conditions Part I.A.1.a, Part III, Part III.B.2.c(1), (4) and (7), Part III.B.6.b(1)(a), Part III.B.6.b(1)(e), Part III.B.6.b(1)(f), Part III.D.1, and Part III.E, and, for Sector X, Part IV.B.1, Part IV.B.2.a, and Part IV.B.2.b of the 2004 Permit, and conditions Parts 6, 8 and 9 of the Facility SWP3 revealed during the inspection conducted by DEQ staff on April 29, 2009.

18. Vitex responded to the NOV by electronic mail on July 6, 2009, that enclosed the following: an updated SWP3 and site map that identified the locations of potential pollutant sources, two new outfalls from which storm water discharges from the Facility, and the areas within the facility that drain to those outfalls; a quarterly Facility inspection, quarterly visual examinations of storm water quality at the two newly identified outfalls, and a signed non-storm water certification, all dated June 12, 2009; an annual CSCE dated June 16, 2009; and a certificate of training conducted on June 16, 2009. The registration statement for the 2009 Permit, which is referenced in paragraph C.1 of this Order, also identified those two new outfalls.

19. DEQ enforcement staff conducted a site visit on July 20, 2009, and confirmed the representations made in Vitex's July 6, 2009, electronic mail and noted that housekeeping deficiencies had been corrected. Vitex also provided copies of the quarterly Facility inspection and visual examinations of storm water quality for the 2nd Quarter 2009.

SECTION D: Agreement and Order

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

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

2. Pay a civil charge of $12,348 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 delivered to:

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

Vitex shall include its Federal Employer Identification Number (FEIN) (06-1189583) 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Vitex for good cause shown by Vitex, 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, Vitex admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Vitex 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. Vitex 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 Vitex 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. Vitex 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 occurrence. Vitex shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Vitex 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 Vitex 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 Vitex. Nevertheless, Vitex 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. Vitex 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

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Vitex.

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

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, Vitex voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2009.

_____

Francis L. Daniel, Regional Director
Department of Environmental Quality

Vitex Packaging, Inc., voluntarily agrees to the issuance of this Order.

Date: Sept. 28, 2009 By: Timothy Hare, President/CEO
(Person) (Title)
Vitex Packaging, Inc.

Commonwealth of Virginia
City/County of Suffolk

The foregoing document was signed and acknowledged before me this 28th day of September, 2009, by Timothy Hare who is President and CEO of Vitex Packaging, Inc., on behalf of the corporation.

Yvette White Jenkins, Yvette White Jenkins
Notary Public

7146379
Registration No.

My commission expires: August 31, 2011

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

Vitex shall:

1. By January 10, 2010, April 10, 2010, July 10, 2010, and October 10, 2010, submit to DEQ Tidewater Regional Office, reports of all Facility inspections and visual examinations of storm water quality conducted by or on behalf of Vitex to ensure compliance with the Facility SWP3 and the 2009 Permit during the preceding three-month period. Reports shall include any corrective action taken in response to deficiencies noted during any inspection or examination.

2. Comply with all conditions of the 2009 Permit.

3. Mail all submittals and reports required by this Appendix A to:

   Mr. Francis L. Daniel, Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Blvd.
   Virginia Beach, VA 23462