



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

Craig R. Nicol  
Regional Director

## STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**Belmont Peanuts of Southampton, Inc.**

**FOR**

**Unpermitted Discharge**

### **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 Belmont Peanuts of Southampton, Inc., for the purpose of resolving certain violations of the State Water Control Law 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. "Belmont Peanuts" means Belmont Peanuts of Southampton, Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Belmont Peanuts is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "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.
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 Belmont Peanuts of Southampton, Inc. located at 23195 Popes Station Road, in Capron, VA 23829, a manufacturing facility of peanut products.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "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.
11. "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.
12. "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.

13. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "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.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "VPDES" means Virginia Pollutant Discharge Elimination System.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Belmont Peanuts manufactures peanut products in which shelled, skinless, peanuts are first soaked in water for a period of time prior to draining, frying, cooling, and packaging. The Facility has been operating in this location since 2004. A new facility is being constructed at an alternate location, scheduled for startup in May, 2019. Upon startup, manufacturing of peanut products at the current Facility is scheduled to be shut down.
2. The Property is adjacent to an unnamed tributary to Buckhorn Swamp and Buckhorn Creek, a tributary to the Chowan River, the Albemarle Sound (North Carolina) and the Atlantic Ocean. Buckhorn Creek is listed as impaired/not meeting water quality standards for aquatic life on the Virginia Impaired Waters 303(d) Report and the 305(b)/303(d) Integrated Report for low dissolved oxygen and low pH. The causes of the impairments are unknown.
3. On September 28, 2018, based upon an inquiry from Belmont Peanuts, DEQ staff conducted an on-site inspection at the Facility. As observed by DEQ staff, the soaking water from the peanut processing was being discharged to state waters without treatment.
4. Upon learning of the non-compliance, Belmont Peanuts ceased the discharge.
5. 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."
6. 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.

7. Va. Code § 62.1-44.5(B) and 9 VAC 25-31-50(B) require any person who discharges to state waters to notify DEQ within 24 hours of the discovery of the discharge.
8. On November 16, 2018, DEQ issued NOV No. W2018-11-T-001 for the unpermitted discharge of wastewater to state waters. Belmont Peanuts responded to the NOV on November 28, 2018.
9. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
10. The Department has issued no permits or certificates to Belmont Peanuts.
11. Buckhorn Swamp and Buckhorn Creek are surface waters located wholly within the Commonwealth and are “state water(s)” under State Water Control Law.
12. Based on the results of the September 28, 2019 inspection, the Board concludes that Belmont Peanuts has violated 9 VAC 25-31-50(A) and (B) and Va. Code § 62.1-44.5(A) and (B), by discharging wastewater to state waters without a permit, as described in paragraphs C(5) through C(8), above.
13. Belmont Peanuts has submitted documentation that verifies that the violations as described in paragraphs C(3) through C(8), above, have 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 Belmont Peanuts, and Belmont Peanuts agrees to:

1. Pay a civil charge of \$30,000 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

<u>Payment Due Date</u>	<u>Payment Amount</u>
July 1, 2019	\$7,500
August 1, 2019	\$7,500
September 1, 2019	\$7,500
October 1, 2019	\$7,500

2. If the Department fails to receive a civil charge payment pursuant to the schedule described in the above paragraphs D.2, the payment shall be deemed late. If any payment is late, the Department shall have the right to demand in writing full payment of the entire remaining balance under this Order by Belmont Peanuts. Belmont Peanuts shall pay the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or a payment of less than the entire remaining balance shall not serve as a waiver of the Department’s right to accelerate payment of the balance under this Order.

3. 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

4. Belmont Peanuts shall include its Federal Employer Identification Number (FEIN) 54-1668226 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, Belmont Peanuts 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 Belmont Peanuts for good cause shown by Belmont Peanuts, 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 NOV No. W2018-11-T-001 dated May 23, 2018. 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.
  1. For purposes of this Order and subsequent actions with respect to this Order only, Belmont Peanuts admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
  3. Belmont Peanuts consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
  4. Belmont Peanuts 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.

5. Failure by Belmont Peanuts 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.
6. 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.
7. Belmont Peanuts 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. Belmont Peanuts shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Belmont Peanuts 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.

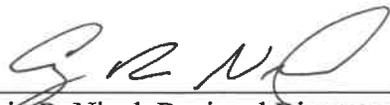
8. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and Belmont Peanuts. Nevertheless, Belmont Peanuts agrees to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Belmont Peanuts has completed all of the requirements of the Order;
- b. Belmont Peanuts 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 Belmont Peanuts.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Belmont Peanuts from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. Any plans, reports, schedules or specifications attached hereto or submitted by Belmont Peanuts 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.
12. Any documents to be submitted pursuant to this Order shall be submitted by Belmont Peanuts or an authorized representative of Belmont Peanuts.
13. 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.
14. By its signature below, Belmont Peanuts voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 30 day of MAY, 2019.

  
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Craig R. Nicol, Regional Director  
Department of Environmental Quality

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Belmont Peanuts of Southampton, Inc. voluntarily agrees to the issuance of this Order.

Date: 3/19/2019 By: *R.F. Marks, IV*  
(Person)  
Belmont Peanuts of Southampton, Inc.

Commonwealth of Virginia  
City/County of Southampton

The foregoing document was signed and acknowledged before me this 19<sup>th</sup> day of March, 2019, by R.F. Marks, IV who is Vice-President of Belmont Peanuts of Southampton, Inc., on behalf of the company.

*Anne B. Railey*  
Notary Public

170270  
Registration No.

My commission expires: 03/31/22

Notary seal:

