



# 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 AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Chesapeake Grain Company, Inc.  
FOR  
Chesapeake Grain Company, Inc.  
Registration No. 60039**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Chesapeake Grain Company, Inc., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable regulations.

### **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 Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Chesapeake Grain" means Chesapeake Grain Company, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Chesapeake Grain is a "person" within the meaning of Va. Code § 10.1-1300.
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 Chesapeake Grain Company, Inc. grain handling and storage facility located at 5500 Bainbridge Boulevard, Chesapeake, VA 23320.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "Permit" means a Minor New Source Review permit to construct and operate a grain handling facility, which was issued to February 1, 2019 under air registration no. 60039.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
10. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

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

1. Chesapeake Grain owns and operates the Facility in the Chesapeake, Virginia. The Facility is the subject of the Permit, which allows Chesapeake Grain to construct and operate a grain handling facility.
2. On October 25, 2017, DEQ received an air permit application for a new bucket elevator Unit BE2 with a listed date of construction as "June 2015". The air permit application also listed equipment exempt from air permitting.
3. DEQ had not issued an air permit for Chesapeake Grain to construct the bucket elevator Unit BE2 at the Facility.
4. A review of DEQ files did not find notification of construction, anticipated date of initial startup, or actual date of startup of the bucket elevator.
5. 9 VAC 5-80-1120(A) provides that no owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining a permit.

6. 9 VAC 5-80-1210(E) states that any owner who constructs or operates a stationary source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a source who commences construction or operation without receiving a permit, shall be subject to appropriate enforcement action.
7. 9 VAC 5-50-50(A)(1) requires that any owner or operator of a new or modified source shall provide written notifications of the date of commencement of construction, reconstruction, or modification of a new or modified source no later than 30 days after such date.
8. On February 1, 2019, based subsequent review of the information listed in the air permit application for bucket elevator BE2, the Department issued Notice of Violation No. ATRO001115 to Chesapeake Grain for the violations described in paragraphs C(3) through C(7), above.
9. On February 21, 2019, responded to the NOV by telephone. In its response, Chesapeake Grain staff said they did not realize at the time that of construction of the new bucket elevator, BE2 that it would need an air permit and believed BE2 would be exempt from air permitting like other Facility equipment.
10. Based on the results of the air permit application, the Board concludes that Chesapeake Grain has violated 9 VAC 5-80-1120(A), 9 VAC 5-80-1210(E), and 9 VAC 5-50-50(A)(1), as described in paragraphs C(3) through C(7), above.
11. Chesapeake Grain was issued an air permit on February 1, 2019 for the bucket elevator BE2 that verifies that the violations described in paragraphs C(3) through C(7), above, have been corrected.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Chesapeake Grain, and Chesapeake Grain agrees to pay a civil charge of \$5,500.00 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, 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

Chesapeake Grain 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, Chesapeake Grain 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 Chesapeake Grain for good cause shown by Chesapeake Grain, 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. ATRO001115 dated February 1, 2019. 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, Chesapeake Grain admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Chesapeake Grain 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. Chesapeake Grain declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution 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 Chesapeake Grain 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. Chesapeake Grain 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. Chesapeake Grain shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Chesapeake Grain 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.

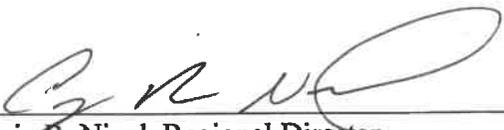
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Chesapeake Grain. Nevertheless, Chesapeake Grain agrees to be bound by any compliance 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 Chesapeake Grain has completed all of the requirements of the Order;
  - b. Chesapeake Grain 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 Chesapeake Grain.

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

And it is so ORDERED this 1<sup>st</sup> day of April, 2019.

  
Craig R. Nicol, Regional Director  
Department of Environmental Quality

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Chesapeake Grain voluntarily agrees to the issuance of this Order.

Date: 3/29/19 By: Frank T Williams, Owner  
(Person) (Title)  
Chesapeake Grain Company, Inc.

Commonwealth of Virginia  
City/County of VIRGINIA BEACH

The foregoing document was signed and acknowledged before me this 29<sup>th</sup> day of  
MARCH, 2019, by FRANK T. WILLIAMS who is

PRESIDENT of Chesapeake Grain Company, Inc., on behalf of the  
corporation.

James D. Schmidt  
Notary Public

257769  
Registration No.

My commission expires: 10/31/21

Notary seal:



James Schmidt  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #257769  
My Commission Expires  
10/31/21