



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Doug Domenech
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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Chesapeake Grain Company, Inc. Storm Water Registration No. VAR051797

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 Chesapeake Grain Company, 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. "Chesapeake Grain" means Chesapeake Grain Company, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Chesapeake Grain is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "CSCE" means a comprehensive site compliance evaluation.
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. "DMR" means Discharge Monitoring Report.

7. "Facility" means the Chesapeake Grain Facility located at 5500 Bainbridge Boulevard in Chesapeake, Virginia, where Chesapeake Grain handles and stores grain in bulk. The Facility is leased from Davis Grain Corporation.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "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.
10. "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. Chesapeake Grain registered for and received coverage under the Permit to discharge storm water associated with industrial activity from the Facility as documented by Registration Number VAR051797 effective October 1, 2009.
11. "Registration statement" means a registration statement for storm water discharges under 9 VAC 25-151-60.
12. "Regulation" means the VPDES General Permit for Storm Water Discharges Associated with Industrial Activity, 9 VAC 25-151-10 *et seq.*
13. "Sector U" means Industry Sector U defined by the Regulation as that sector of industry engaged, in part, in processing grain mill products.
14. "State Water Control Law" means Chapter 3.1 (§§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "SWP3" means a storm water pollution prevention plan.
16. "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.
17. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.
21. "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. Chesapeake Grain operates the Facility in Chesapeake, Virginia. Storm water discharges from the Facility are subject to the Permit through Registration No. VAR051797. Storm water from the Facility discharges to the Southern Branch of the Elizabeth River (“Southern Branch”).
2. The Southern Branch is located in the James River Basin and is listed in DEQ’s 305(b) report as impaired for polychlorinated biphenyl (“PCB”) in fish tissue, estuarine bioassessments, and low dissolved oxygen (“DO”). The sources of the PCB and estuarine bioassessments impairments are believed to include contaminated sediments; industrial point source discharges are among the suspected sources of the DO impairment.
3. Part I.A.1.a. of the Permit requires Chesapeake Grain to perform quarterly visual examinations of the quality of the storm water discharging from the three storm water outfalls (Outfalls 001, 002 and 003) identified in the Permit during a qualifying rain event [as defined by Part I.A.2.b of the Permit] and to document the visual quality of the storm water discharges including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution.
4. Part I.A.1.b and Part IV.D (for Sector U) of the Permit require Chesapeake Grain to conduct benchmark monitoring of storm water discharges from the Facility’s three permitted storm water outfalls for the presence of two pollutants of concern (total suspended solids and total Kjeldahl nitrogen) once during each benchmark monitoring period during a qualifying rain event [as defined by Part I.A.2.b the Permit] and record benchmark monitoring results on a DMR. Before July 1, 2009, DMRs were to be retained at the Facility with the Facility SWP3; thereafter they are also to be submitted to DEQ.
5. Part I.A.1.b of the Permit also provides that exceedance of a benchmark concentration value for a pollutant of concern included in the Permit does not constitute a violation of the Permit, but does trigger an obligation to take measures to control regulated pollutants that exceed benchmark values. Control measures may include, but are not limited to modifying the storm water controls outlined in the Facility SWP3.
6. Part I.B.1 of the Permit prohibits vehicle washing and clean-out operations at the Facility.
7. DEQ staff had conducted a routine compliance inspection on May 19, 2009, and noted, among other things, deficiencies in the Facility SWP3 and the failure to conduct annual benchmark monitoring during the monitoring period that ended June 30, 2008. These deficiencies were noted in a Warning Letter dated June 10, 2009. DEQ also issued Chesapeake Grain a Warning Letter on February 24, 2010, for failing to submit a DMR

reflecting benchmark monitoring results for the monitoring period ending December 31, 2009.

8. During DEQ Facility inspections on March 29, 2010, and April 7, 2010, DEQ staff documented the following compliance deficiencies with respect to the monitoring and discharge requirements of the Permit:
 - a. The quarterly visual examinations of storm water quality performed during the 3rd and 4th Quarters of calendar year 2009 and the 1st Quarter of calendar year 2010 recorded only three (odor, color and clarity) of the nine indicators of storm water pollution required by Part I.A.1.a of the Permit.
 - b. Although samples of storm water discharges were collected on July 29, 2009, from all three outfalls for the July 1 to December 31, 2009, benchmark monitoring period and analyzed for the two pollutants of concern, the results were not recorded on DMRs or submitted to DEQ as required by Part I.A.1.b of the Permit.
 - c. The quarterly visual examinations of storm water quality for the 3rd and 4th Quarters of calendar year 2009 and for the 1st Quarter of calendar year 2010 and the benchmark monitoring of storm water discharges for the July 1 to December 31, 2009, benchmark monitoring period were not performed during qualifying rain events as required by Part I.A.2.b of the Permit.
 - d. Vehicle washing operations, prohibited by Part I.B.1 of the Permit, were being conducted at the Facility.
9. Chesapeake Grain violated conditions Part I.A.1.a, Part I.A.1.b, Part I.A.2.b, and Part I.B.1 of the Permit as noted in paragraph C(8) of this Order.
10. Chesapeake Grain is required to develop and implement a Facility SWP3 according to requirements outlined in Part III and Part IV.C (for Sector U) of the Permit
11. Part III.B.6.b(1) of the Permit provides that exposed areas of the Facility be kept clean so as to minimize the potential of contributing pollutants to storm water discharges.
12. Part III.B.6.b(5) and Part IV.C.2.a (for Sector U) of the Permit provide that a Facility SWP3 include a schedule (at least monthly) for conducting routine inspections of the loading, unloading and product storage areas within the Facility.
13. Part III.B.6.b(5) of the Permit also requires that the Facility SWP3 document corrective actions taken in response to deficiencies noted during routine Facility inspections.
14. Part III.B.6.b(6) of the Permit provides that a SWP3 include a storm water employee training program and identify a schedule for such training.
15. Part III.E of the Permit requires that the report of the annual CSCE include an evaluation summary.

16. During the DEQ Facility inspections on March 29, 2010, and April 7, 2010, DEQ staff reviewed the Facility SWP3 and documented compliance deficiencies with respect to the SWP3 requirements of the Permit, including the following:
 - a. The Facility SWP3 did not require monthly inspections of the loading, unloading and product storage areas of the Facility or establish a schedule for training Facility employees in storm water management as required by Part III.B.6.b(5) and (6) and Part IV.C.2.a (for Sector U) of the 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.B.6.b(1) of the Permit. Specifically, there were a small spill of apparent fertilizer on the ground, a large, unconfined, exposed pile of waste grain stored at the Facility, and large quantities of dried beans, grain and chaff on the ground throughout the Facility and in State waters adjacent to the Facility.
 - c. The loading, unloading and product storage areas within the Facility were not being inspected monthly as required by Part III.B.6.b(5) and Part IV.C.2.a (for Sector U) of the Permit.
 - d. The Facility SWP3 did not note corrective actions taken in response to deficiencies noted during the routine Facility inspections conducted during the 3rd and 4th Quarters of calendar year 2009 and the 1st Quarter of calendar year 2010 as required by Part III.B.6.b(5) of the Permit.
 - e. The annual CSCE performed in calendar 2009 did not include an evaluation summary as required by Part III.E of the Permit.
17. Based on the results of the March 29, 2010, and April 7, 2010, inspections, the Board concludes that Chesapeake Grain has violated conditions Part III.B.6.b(1), Part III.B.6.b.(5) and (6), Part III.E and Part IV.C.2.a (for Sector U) of the Permit as noted in paragraph C(16) of this Order.
18. On August 10, 2010, DEQ issued NOV W2010-08-T-0003 to Chesapeake Grain. The NOV advised Chesapeake Grain of the violations of conditions Part I.A.1.a, Part I.A.1.b, Part I.A.2.b, Part I.B.1, Part III.B.6.b(1), Part III.B.6.b.(5) and (6), Part III.E and Part IV.C.2.a (for Sector U) of the Permit revealed during the inspections conducted by DEQ staff on March 29, 2010, and April 7, 2010.
19. A representative of Chesapeake Grain responded to the report of the March 29, 2010, and April 7, 2010, compliance inspections by electronic mail, which included drafts of a revised SWP3 and an annual CSCE performed on June 4, 2010. DEQ compliance staff responded on June 17, 2010, with suggestions on how to make both documents compliant with Permit requirements. By letter dated September 29, 2010 (and received October 4, 2010), Chesapeake Grain submitted to DEQ a CSCE dated September 30, 2010; a SWP3

dated September 2010; the quarterly visual examination of storm water quality for the 2nd Quarter of calendar year 2010; Facility inspections for June, July and August 2010; the DMRs (unsigned) for the July 29, 2009, sampling event [noted in paragraph C(8)(b) of this Order]; and DMRs (also unsigned) for the calendar year 2010 benchmark monitoring period (samples taken June 16, 2010). The CSCE indicated that repairs had been made to the antiquated conveying and chaff collection systems to reduce the amount of grain that spills from the systems; that a concrete pad had been installed between several of the storage tanks to facilitate the recovery of spilled grain; and that an additional employee had been hired to assist with housekeeping.

20. DEQ compliance and enforcement staff confirmed the representations made in September 29, 2010, written response by a site visit on October 5, 2010. Staff noted overall improvement in Facility cleanliness and also observed that Outfall 001 does not adequately represent storm water discharging from the Facility as it includes flow from a stream that enters the Facility from off site.
22. Chesapeake Grain has submitted documentation that verifies and DEQ staff inspected the Facility on October 5, 2010, and verified that the violations as described in paragraphs C(16)(a) and C(16)(c), above, have been corrected.
23. In order for Chesapeake Grain to return to compliance, DEQ staff and representatives of Chesapeake Grain have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order

SECTION D: Agreement and Order

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

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$4,116 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) (54-1634891) 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 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. 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 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 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 occurrence. Chesapeake Grain shall show

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 Chesapeake Grain 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 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. 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
 - b. 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 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 19 day of April, 2011.


Regional Director
Department of Environmental Quality

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Chesapeake Grain Company, Inc., voluntarily agrees to the issuance of this Order.

Date: 11/24/10 By: Frank T Williams Sr
(Person) (Title)
Chesapeake Grain Company, Inc.

Commonwealth of Virginia
City/County of VIRGINIA BEACH

The foregoing document was signed and acknowledged before me this 24TH day of NOVEMBER 2010, by FRANK T. WILLIAMS, SR. who is PRESIDENT of Chesapeake Grain Company, Inc., on behalf of the corporation.

James A. Scharvet
Notary Public

257769
Registration No.

My commission expires: 10/31/13

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

Chesapeake Grain shall:

1. By April 10, 2011, certify that all vehicle-washing operations have ceased at the Facility.
2. By April 10, 2011, July 10, 2011, October 10, 2011, and January 10, 2012, submit to DEQ Tidewater Regional Office, reports of all Facility inspections and visual examinations of storm water quality conducted by or on behalf of Chesapeake Grain to ensure compliance with the Facility SWP3 and the Permit during the preceding three-month period. Reports shall include any corrective action taken in response to deficiencies noted during any inspection or examination.
3. By June 1, 2011, submit to DEQ Tidewater Regional Office, for review and approval, a corrective action plan ("plan") and schedule that (1) eliminates or relocates Outfall 001 so that it captures only storm water discharging from the Facility and (2) substantially reduces the amount of waste grain, chaff and other solids that enter State waters. All actions under the plan and schedule shall be completed by June 1, 2012. Upon approval, the plan and schedule shall become a part of and enforceable under the terms of this Order.
4. Within 90 days of the completion of the corrective action required by Item 3 of this Appendix A (but no later than September 1, 2012), submit to DEQ Tidewater Regional Office for review and approval an updated Facility SWP3 that contains all elements required by Part III and Part IV.C (for Sector U) of the Permit and that incorporates the completed corrective action.
5. Notwithstanding Part I.A.1.b of the Permit, perform benchmark monitoring of all three outfalls twice during calendar year 2011: once during the period January through June 2011 and once during the period July through December 2011. The two sampling events will be at least 30 days apart and will be reported to DEQ on DMRs by July 10, 2011, and January 10, 2012, respectively.
6. Comply with all conditions of the Permit.
7. Mail all submittals and reports required by this Appendix A to:

Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462